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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 ERICA ALMECIGA,

4 Plaintiff,

5 v.

15 Civ. 4319 (JSR)

6 CENTER FOR INVESTIGATIVE
7 REPORTING, INC.,

8 Defendant.

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9
10 December 4, 2015
12:35 p.m.

11 Before:

12 HON. JED S. RAKOFF,

13 District Judge

14 APPEARANCES

15 THE LANDAU GROUP, PC
Attorneys for Plaintiff
16 BY: KEVIN LANDAU
ZACH LANDAU

17 DAVIS, WRIGHT, TREMAINE, LLP
Attorneys for Defendant
18 BY: THOMAS BURKE
ALISON SCHARY

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1 (Case called)

2 THE DEPUTY CLERK: Will the parties please identify
3 themselves for the record, and will everybody else be seated?

4 MR. K. LANDAU: Good afternoon, your Honor. Kevin
5 Landau on behalf of the plaintiff.

6 MR. Z. LANDAU: Zach Landau.

7 PLAINTIFF: Erica Almeciga.

8 MR. BURKE: Thomas Burke from Davis, Wright, Tremaine
9 on behalf of Center for Investigative Reporting, defendant.

10 MS. SCHARY: And Alison Schary from Davis, Wright,
11 Tremaine on behalf of Center for Investigative Reporting.

12 THE COURT: Are the other people in the courtroom
13 witnesses?

14 MR. BURKE: Yes, your Honor. If I may introduce Bruce
15 Livesey, Steve Talbot, both on behalf of CIR.

16 THE COURT: And what about the other gentleman?

17 MR. K. LANDAU: Your Honor, Mr. Isaac Duarte on behalf
18 of plaintiff.

19 THE COURT: So, I'm not going to, on my own motion,
20 exclude any witnesses but if either counsel wants them excluded
21 I will exclude them.

22 MR. BURKE: No, your Honor.

23 MR. K. LANDAU: Your Honor, I believe Mr. Talbot is
24 representing one of the defendants as a corporate
25 representative?

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1 MR. BURKE: No.

2 MR. K. LANDAU: Oh, he is not. Okay, then yes, we
3 would like to request sequestration.

4 THE COURT: That includes the gentleman who is here
5 for you as well.

6 MR. K. LANDAU: Yes.

7 THE COURT: So, those people need to go and any other
8 witness needs to go into the witness room. My courtroom deputy
9 will show you where that is right now. The other gentleman who
10 just came in, I don't know if he is a witness or not. No?
11 Very good.

12 All right. So, let me first state this is really a
13 combined evidentiary hearing; it is both a hearing on the Rule
14 11 motion brought by the defense but it is also in the nature
15 of a Daubert hearing with respect to the expert witness if the
16 case goes forward. And I appreciate the efforts that both
17 sides have gone to to make available the relevant people.

18 This has been a difficult schedule, scheduling day for
19 me. I had planned originally to go to the funeral of my
20 wonderful late colleague Judge Owen and I couldn't even do that
21 because of an ongoing jury trial that is not moving as fast as
22 I hoped and so I need to let you guys know, in advance, that we
23 must end by 4:30 today.

24 I will, when we have concluded today, I will give each
25 side the opportunity to put in written summations so you don't

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1 need to worry about the time for oral summations because we
2 will do it by writing. If you wanted to give an oral opening
3 at which both sides had requested at one point, I am happy to
4 hear you for 10 minutes a side but I wonder, given the time
5 constraints and since, frankly, I think I know what your
6 positions are from the papers, whether we shouldn't just move
7 directly into the evidentiary hearing.

8 But, does anyone feel the need for an opening
9 statement?

10 MR. BURKE: The Center for Investigative Reporting
11 defendants do not.

12 Your Honor, there is one housekeeping matter which I
13 think will also go with respect to speed.

14 THE COURT: Okay.

15 MR. BURKE: I have talked with Mr. Landau about that.
16 We have stipulated to the authenticity of the evidence that was
17 submitted in connection with the motion and the opposition
18 papers. To save the Court time, CIR has marked its exhibits in
19 the order that they were filed. As a suggestion, for the
20 purposes of this hearing only, we might ask that the Court
21 accept all of this evidence into the record reserving
22 objections as to evidence either for later in the day, which
23 seems unlikely, or post-hearing briefing, if the Court requests
24 that.

25 THE COURT: Well, I'm perfectly happy to have people

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1 reserve any and all objections to evidence that's received
2 today for purposes of a trial if the case goes to trial but I'm
3 not prepared to let you say, after today is over, even though
4 we didn't object at the time the evidence was offered we now
5 object to its consideration in this hearing. So, as far as I'm
6 concerned, when a piece of evidence is offered today, if you
7 have an objection, state it, I will rule. But, you won't be
8 able to reserve that objection for purposes of this hearing if
9 you don't state it.

10 MR. BURKE: Understood.

11 THE COURT: All right. Very good.

12 Now, I'm sorry. Did plaintiff's counsel want an
13 opening statement or not?

14 MR. K. LANDAU: Your Honor, in the interest of time,
15 that's fine.

16 THE COURT: Okay.

17 So, I think the first witness on your list was the
18 gentleman from Nepal and in an excess of liberality I permitted
19 him to testify by telephone. So, let's see if we can get him
20 on the telephone.

21 MR. BURKE: Your Honor, for this witness is it
22 appropriate for us to sit at the table --

23 THE COURT: Why don't counsel and the Court, we will
24 all gather at the speakerphone right now.

25 MR. BURKE: All right.

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1 THE COURT: Mr. Hooper, this is Judge Rakoff. Can you
2 hear me?

3 THE WITNESS: Yes, I can.

4 THE COURT: Very good. I'm going to swear you in to
5 testify, so please raise your right hand.

6 JOSIAH HOOPER,

7 called as a witness by the Defendant,

8 having been duly sworn, testified as follows:

9 THE COURT: Please, tell us what you do for a living.

10 THE WITNESS: I am a freelance television producer.

11 THE COURT: And are you familiar with the plaintiff
12 here, Ms. Almeciga?

13 THE WITNESS: Yes, I am.

14 THE COURT: And how did you come to know her?

15 THE WITNESS: During the production of a documentary
16 film.

17 THE COURT: And have you been furnished with a copy of
18 a purported release that she signed?

19 THE WITNESS: I don't have it in my possession.

20 THE COURT: Have you seen it previously?

21 THE WITNESS: Yes, I have.

22 THE COURT: Were you present -- I'm sorry.

23 Did you see her sign it?

24 THE WITNESS: I was in the room when she signed it.

25 THE COURT: And at what stage of the documentary

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1 production was this?

2 THE WITNESS: This was during the filming of the first
3 two interviews which were with Rosalio Reta and then with
4 Ms. Almeciga. So, we had just finished filming their
5 interviews --

6 THE COURT: And who --

7 THE WITNESS: -- that day.

8 THE COURT: And who presented the release to
9 Ms. Almeciga?

10 THE WITNESS: I believe it was Bruce Livesey, my
11 colleague on the shoot.

12 THE COURT: And was this in a conference room or where
13 was it?

14 THE WITNESS: Yes, this was in the conference room of
15 the hotel we were staying at in Woodville, Texas.

16 THE COURT: And what, if anything, do you recall being
17 said in connection with this signing?

18 THE WITNESS: Nothing.

19 THE COURT: So, by nothing you mean you don't recall
20 anything or do you mean that to the best of your recollection
21 nothing was said?

22 THE WITNESS: To the best of my recollection nothing
23 was said.

24 THE COURT: All right, so he just put the release in
25 front of her and she just signed?

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Hooper - direct

1 THE WITNESS: Yes. To my recollection, yes.

2 THE COURT: And how far away from her were you when
3 she signed?

4 THE WITNESS: I couldn't have been more than 10 feet.
5 I would have been putting camera equipment away.

6 THE COURT: Okay.

7 Let me turn it over to counsel for any questions they
8 may have. We will start with defense counsel.

9 DIRECT EXAMINATION

10 BY MR. BURKE:

11 Q. Mr. Hooper, when did you first meet Ms. Almeciga?

12 A. Sorry. You have to speak up just a little bit.

13 Q. Mr. Hooper, when did you first meet Ms. Almeciga?

14 A. When we picked her up from the airport en route to
15 Woodville, Texas.

16 Q. Before you met her in Texas, had you ever met her before?

17 A. No, I had not.

18 Q. Had you ever seen Ms. Almeciga's signature before she
19 signed the release?

20 A. No, I had not.

21 Q. Did you ever see Ms. Almeciga again in person?

22 A. No. That was the only time I ever met her.

23 Q. When she signed the release, was there anyone else in the
24 room other than Ms. Almeciga and Mr. Livesey and yourself?

25 A. No, there was not.

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Hooper - direct

1 Q. After the release was signed, what happened to it
2 physically?

3 A. I put it in with my files and brought it back to California
4 with me and took it to the office of the Center for
5 Investigative Reporting.

6 Q. Did you ever see the release again after that?

7 A. I think I may have seen it along with all the other
8 releases just in terms of handing them all over and going over
9 them when we added new releases to the files, but I don't
10 recall having to pull it out and look at it necessarily, so.

11 To my recollection, I may have seen it once after
12 that.

13 Q. Did Ms. Almeciga ever raise any concerns to you personally
14 about not being identified or having her face recorded?

15 A. No, she did not.

16 Q. Did Ms. Almeciga ask you to promise not to identify her in
17 any way?

18 A. No, she did not.

19 Q. When you were in Woodville, Texas, did you participate in
20 the interview with Mr. Reta?

21 A. Yes, I did.

22 Q. Did Mr. Reta also sign a standard CIR release?

23 A. Yes, he did.

24 Q. Did you see him sign that release?

25 A. I don't recall whether I saw him sign it. It was passed to

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Hooper - cross

1 a guard and brought to him and he signed it and it was returned
2 to us.

3 Q. At any time did Mr. Reta ask you to agree not to show
4 Ms. Almeciga's face?

5 A. No, he did not.

6 Q. During any time during your interview again now with
7 Ms. Almeciga, did she ever express any concerns to you about
8 her safety?

9 A. No, she did not.

10 Q. Did she appear interested in being interviewed?

11 A. Yes, she did.

12 MR. BURKE: I have no further questions.

13 THE COURT: All right. Now we will have questions by
14 plaintiff's counsel.

15 CROSS EXAMINATION

16 BY MR. K. LANDAU:

17 Q. Mr. Hooper, can you hear me?

18 A. Yes, I can.

19 Q. Okay.

20 Good morning, sir. My name is Kevin Landau, I am one
21 of the attorneys for the plaintiff Erica Almeciga. You have
22 indicated that --

23 A. Good morning.

24 Q. You indicated that you were in the room at the time of the
25 purported release being presented to Ms. Almeciga; is that

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Hooper - cross

1 correct?

2 A. Yes, I was.

3 Q. Okay.

4 Do you recall if she was standing or sitting when this
5 purported release was being handed to her?

6 A. I think she was sitting.

7 Q. Okay.

8 Do you recall that you previously had a deposition
9 with co-counsel on October 30th, 2015?

10 A. Yes, I did.

11 Q. And do you recall having stated similarly under oath, and
12 the question was:

13 "Q Do you recall if she was standing or sitting when she was,
14 when this release was being handed to her?"

15 And at the time of that deposition you answered:

16 "A No.

17 THE COURT: Let me see that.

18 A. I don't recall. I may have said no.

19 Q. Okay.

20 Do you recall if Ms. Almeciga is right-handed or
21 left-handed?

22 A. No, I don't.

23 Q. Okay.

24 Was she wearing glasses?

25 A. I don't recall.

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Hooper - cross

1 Q. Okay.

2 Do you recall the color of the pen that was being
3 used?

4 A. No, I do not.

5 Q. Do you recall who handed Ms. Almeciga the pen to sign the
6 purported release --

7 THE COURT: Whoa, whoa. That assumes that someone
8 handed her a pen.

9 MR. K. LANDAU: Pardon me.

10 Q. Do you recall if she had used your pen, her pen, or
11 Mr. Livesey's pen?

12 A. No, I don't recall.

13 Q. Okay.

14 You indicated that you were putting away camera
15 equipment; is that correct?

16 A. That's right.

17 Q. And during the time of you putting the camera equipment
18 away, was your back to both Mr. Livesey and Ms. Almeciga?

19 A. No, it was not.

20 Q. It was facing them; is that correct?

21 THE COURT: What was. You mean he was facing them?

22 Q. You were facing them?

23 A. Yes.

24 Q. The entire time?

25 A. No, I don't recall if it was the entire time but I don't

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Hooper - cross

1 keep my back to people when I'm cleaning up equipment.

2 Q. So, do you recall if Bruce had filled out any portion of
3 the release?

4 A. I don't recall for sure but I think parts of the release
5 may have been filled out by Bruce.

6 Q. I'm sorry. You don't recall you said?

7 THE COURT: He said he doesn't recall but he thinks
8 part of it may have been filled out by Bruce.

9 MR. BURKE: Correct.

10 BY MR. K. LANDAU:

11 Q. And you recall in your deposition of October 30th, 2015,
12 and I am reading verbatim the answer:

13 "A I would assume that Erica did though Bruce may have filled
14 out part of it for her. I don't recall."

15 THE COURT: I think that's the same.

16 Q. Okay.

17 And you also indicated during that same answer that
18 you did not stand over her, being Ms. Almeciga, while she did
19 it, and that you were collapsing the equipment and everything.

20 Do you recall having made those comments?

21 A. Yes, I do.

22 Q. You had referred to other -- I'm sorry. Forgive me. I
23 have a question.

24 MR. K. LANDAU: Sure.

25 THE COURT: So, I think you said you were standing

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Hooper - cross

1 about 10 feet away?

2 THE WITNESS: Yeah. I would have been kind of within
3 a 10-foot radius.

4 THE COURT: And there was no conversation that you
5 recall; do I have that right?

6 MR. BURKE: You mean at the time of the release
7 signing?

8 THE WITNESS: You know --

9 THE COURT: Go ahead. Go ahead with what you were
10 about to say.

11 THE WITNESS: Yes, there would have been casual
12 conversation going on for sure.

13 THE COURT: So, how do you know that what Mr. Livesey
14 was handing her to sign was the release?

15 THE WITNESS: Because it is something we make sure we
16 do either at the beginning or the end of an interview. It is
17 one of the most important things besides recording the video
18 and audio, to make sure we get a signed release. So, some of
19 that conversation could have been Bruce would say we should
20 have her sign the release now and any other casual -- she was
21 quite comfortable so we may have also had ongoing conversation
22 with Mr. Reta, about their correspondence that we just filmed,
23 the letters that he had written, the photographs. Things like
24 that. But I know that he gave her a release for her to sign
25 because that's one of the important parts of our job while we

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Hooper - cross

1 were in the field.

2 THE COURT: All right.

3 Go ahead.

4 BY MR. BURKE:

5 Q. There was additional handwriting and descriptive terms that
6 was noted on this release. Do you recall that there was
7 additional writing on the release?

8 MR. BURKE: Objection. Vague.

9 MR. K. LANDAU: I can rephrase.

10 THE COURT: No. I will allow it. The objection is
11 overruled.

12 THE WITNESS: Yes, I believe there was comments or a
13 description of her -- which is pretty common for our associate
14 producer for people who don't come in the field are responsible
15 for logging and basically importing this footage into the
16 computer which is common practice and so that people who are
17 familiar with individual people who have been interviewed for
18 our documentaries, so they can find them and confirm that these
19 are the people and that we have the releases, etc.

20 BY MR. K. LANDAU:

21 Q. You said that this is common practice?

22 A. Yes. To take notes on releases, it can be, yes.

23 Q. It can be or it is?

24 A. It is.

25 THE COURT: So, the comments of the sort you are just

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Hooper - cross

1 talking about that were on the release were put there by whom?

2 THE WITNESS: One of our associate producers and I
3 can't be sure which one. We had a handful of different people,
4 I think at least three people working on it, so it could have
5 been any of our associate producers who work in the other room.

6 THE COURT: Well, what I'm getting at is if I
7 understood your testimony a minute ago, you saw her sign the
8 release that the given to her by Mr. Livesey, yes?

9 THE WITNESS: Yes.

10 THE COURT: And then at some point the release was
11 given to -- excuse me?

12 At some point.

13 THE WITNESS: I was in the room.

14 THE COURT: Yes.

15 At some point the release was given to you, yes?

16 THE WITNESS: That's correct.

17 THE COURT: Was that right after it was signed?

18 THE WITNESS: Yeah, that would have been right after
19 it was signed.

20 THE COURT: So when were these additional writings
21 added?

22 THE WITNESS: Would have been back in the offices of
23 CIR.

24 THE COURT: Okay.

25 THE WITNESS: In the edit room.

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Hooper - cross

1 BY MR. K. LANDAU:

2 Q. You indicated that during your deposition testimony that
3 you believe it was Rachel deLeon that had wrote the descriptive
4 language?

5 A. Yes.

6 Q. And that she apparently wrote this descriptive language six
7 to eight months after the interview?

8 A. Yeah. I can't be completely sure when she did it.

9 Q. And she was not in Texas with you --

10 A. No, she was not --

11 THE COURT: I'm going to put you on hold just for one
12 minute, Mr. Hooper. We will be right back.

13 I'm going to obviously let you ask whatever questions
14 you want but I have to say my own impression is that this
15 witness is, given the limited participation he had, is of not
16 as important as the witnesses who are outside. So, I just --

17 MR. K. LANDAU: He is.

18 THE COURT: He is?

19 MR. K. LANDAU: We are getting there.

20 THE COURT: Okay.

21 MR. K. LANDAU: We will get there.

22 THE COURT: We are back. Can you hear us? Okay, we
23 are back. Can you hear us now again?

24 THE WITNESS: Yes, I can.

25 THE COURT: Go ahead.

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Hooper - cross

1 BY MR. K. LANDAU:

2 Q. You indicated that during your deposition testimony that
3 descriptive language is -- strike that.

4 You had been involved with producing stories for HBO
5 as well, correct?

6 A. Yes, I have.

7 Q. And you indicated that you had something like a hundred
8 releases signed; do you recall that?

9 A. Yes.

10 Q. Okay.

11 And do you recall that you had indicated that out of
12 the releases that were executed for HBO, not one of them
13 contained descriptive language?

14 MR. BURKE: Objection. Relevancy.

15 A. No, I wouldn't have said that.

16 Q. What would you have said then?

17 MR. BURKE: Objection, again. Relevancy.

18 A. Well, what I said in response to -- what? I'm sorry.

19 THE COURT: I think --

20 MR. K. LANDAU: I can rephrase.

21 THE COURT: Yes.

22 BY MR. K. LANDAU:

23 Q. How many -- roughly, how many releases that were executed
24 with your involvement with HBO, for instance, would have
25 contained handwriting, descriptive language similar to the one

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Hooper - cross

1 that appears on the CIR release?

2 MR. BURKE: Objection. Relevancy; and vague as to
3 time.

4 THE COURT: The objection to relevancy is overruled.
5 It is a little vague but I will allow it and the witness can
6 give some parameters, if he wishes.

7 THE WITNESS: Yeah. Yeah, the HBO work was different
8 and, like, documentary work you work for different companies,
9 it is different work everywhere so I wasn't even part of the
10 post-production process for HBO. So, once I got all these
11 releases signed they were then sent back to Los Angeles and if
12 there was any descriptive writing, that would have been done in
13 the edit room so that people who weren't in the field were able
14 to identify people on screen doing logging and transcribing
15 work, etc. I wouldn't know about it because I didn't see those
16 releases after they --

17 Q. So is to your knowledge there was no descriptive writing?

18 THE COURT: No, no, no. That's not a fair statement.

19 Q. So you don't know whether there was or wasn't descriptive
20 writing?

21 THE COURT: That's a fair statement.

22 THE WITNESS: That's correct.

23 Q. Traditionally, is the descriptive writing supposed to be
24 accurate?

25 THE COURT: Wait a minute. Now I think it is verging

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Hooper - cross

1 into relevancy because he doesn't have any knowledge of this.

2 MR. K. LANDAU: I will rephrase.

3 BY MR. K. LANDAU:

4 Q. The purpose of the descriptive writing is to be accurate as
5 to the subject being interviewed; is that correct?

6 A. Yes.

7 Q. Okay.

8 And with respect to the CIR release, is it your
9 testimony that that descriptive writing was, indeed, accurate?

10 A. You have to rephrase that. I don't think I follow.

11 THE COURT: Don't understand the question, counsel,
12 because as I understand his testimony -- but let me make sure.

13 Mr. Hooper, let me make sure I understand your
14 testimony. After the release was signed it was given to you
15 and you transferred it, along with a bunch of other releases,
16 to other people who may or may not have added descriptions to
17 various of the releases.

18 Do I have that much right?

19 THE WITNESS: Yeah, that's right.

20 THE COURT: And you understood that the reason that
21 was being done was so that the people at the other end could
22 identify which release corresponded to which person who had
23 been interviewed, yes?

24 THE WITNESS: Correct, yes. The description would
25 have to make sense to them. That way, I would know who it was

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1 based on having met them and interviewed them.

2 THE COURT: And you have no knowledge as to whether,
3 in any given case, the person making the writing, the
4 description writing, had an accurate basis for their
5 information or an inaccurate basis for their information or
6 anything else about it, true?

7 THE WITNESS: Yeah. I would know that they were
8 basing it on the frame which had the image of the subject so
9 they would be basing it on one -- one setup we call it, like
10 one head and shoulders shot of somebody.

11 THE COURT: Right, so that if someone for example --

12 THE WITNESS: On the day of the interview.

13 THE COURT: So, if someone is in a frame and it was of
14 an African American but it turns out the person was really a
15 Latino, they might write down African American when in fact
16 that would not be accurate, true?

17 THE WITNESS: Yes. That could happen.

18 THE COURT: Okay.

19 BY MR. K. LANDAU:

20 Q. Mr. Hooper, do you recall who crossed out the August 14th
21 date on the release and changed it to August 15th?

22 A. No, I don't.

23 Q. Do you recall having interviewed a gentleman from Laredo?

24 A. Yes. I have interviewed a couple of people in Laredo.

25 Q. Okay.

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Hooper - cross

1 This person in particular was -- his identity was
2 concealed? Do you recall?

3 A. You would have to be more specific.

4 Q. Okay.

5 Well, during your deposition had advised that there
6 was a gentleman you had interviewed in Nuevo Laredo, Mexico?

7 A. That could be spate from Laredo, but yeah. Yes.

8 I interviewed a bunch of people in Laredo and Nuevo
9 Laredo.

10 Q. I'm sorry. What was the last part?

11 MR. BURKE: People in Laredo and in Mexico.

12 THE COURT: Yes.

13 MR. K. LANDAU: Oh, okay.

14 Q. And you indicated during your deposition that he did not
15 sign a release because you did not ask him to sign one?

16 A. I indicated that he was someone who did not want his
17 identity known not only to the people who might see the
18 documentary but to me, and so he was someone whose identity I
19 was not willing to even acknowledge myself so I did not ask him
20 for a release.

21 Q. Okay.

22 A. He was a young man who was a shadow in the documentary.

23 Q. During the interview was he facing the camera?

24 A. Yes, he was.

25 Q. You indicated that during post-production when you are

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Hooper - cross

1 editing it is when you apply the shadow or the fogging or some
2 type of concealing of a person's identity?

3 MR. BURKE: Objection. Misstates his testimony.

4 THE COURT: Well, in addition, there shouldn't be any
5 reference to deposition testimony unless it's inconsistent with
6 something he is saying here. So, if you want to know --

7 MR. K. LANDAU: I can rephrase.

8 THE COURT: Yes.

9 MR. K. LANDAU: Absolutely.

10 BY MR. K. LANDAU:

11 Q. The shadowing or fogging or general concealing of a
12 person's identity --

13 A. This is a matter for filmmakers.

14 Q. Can I just finish the question? Sir, can I finish the
15 question and then you can answer?

16 A. Okay.

17 Q. Is it true -- we will make it easy.

18 Is it true that shadowing or fogging or concealing a
19 person's identity takes place during the editing process or the
20 post-production process? Yes or no.

21 A. It is a matter of preference for filmmakers like myself and
22 I think a lot of filmmakers prefer to do it during production
23 because it looks much more dramatic and stylized, where if you
24 do it afterwards it just kind of looks pixelated so it is kind
25 of taking away from part of my craft because I'm a videographer

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Hooper - cross

1 and cinematographer. So, that is not true. So, the young man
2 in Nuevo Laredo we did the shadowing in the field in the
3 apartment where we interviewed him using lights --

4 THE COURT: Could you repeat the very last thing you
5 said because our court reporter had trouble picking it up.

6 THE WITNESS: We use lights to create a silhouette of
7 the subject so they're in shadow. We might use a light behind
8 them. Lights behind them and none front. A black silhouette.

9 THE COURT: Okay.

10 Q. Okay. Sir, I'm going to look for the point in the
11 deposition where it is different from your testimony, so give
12 me a moment.

13 THE COURT: Well, maybe it is and maybe it isn't.

14 Counsel, maybe I should have made this clear. Since
15 both sides already have depositions, if that becomes critical
16 to some issue in this case the -- of course in your written
17 summations you can draw my attention to that but I am not so
18 much concerned in this hearing with the question of, though I
19 know it is important to the litigation, of shadowing, lack of
20 shadowing, practices, non-practices, and so forth. My focus at
21 this hearing is much more on the release and you have had a
22 deposition on other issues and they are perfectly relevant but
23 I just want to narrow the framework a little bit.

24 MR. K. LANDAU: And I will be very quick.

25 THE COURT: Okay.

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Hooper - cross

1 MR. K. LANDAU: Just a few more questions and then I'm
2 done.

3 THE COURT: Go ahead.

4 MR. K. LANDAU: So, your Honor, off the record real
5 quick?

6 Do you prefer we skip over that series of questions?

7 THE COURT: Fine.

8 MR. K. LANDAU: Back on.

9 BY MR. K. LANDAU:

10 Q. Mr. Hooper, you indicated -- strike that.

11 You had interviewed a detective Robert Garcia, I
12 believe is his name? Is that correct? Did I get his name
13 correct?

14 A. Yes. That is correct.

15 And you had concealed his face but released his name,
16 is that correct?

17 A. That's correct.

18 Q. Did you have a written contract to do so?

19 A. He signed a release form.

20 Q. He signed a release.

21 But did you have a separate written contract that
22 stipulated to concealing his identity but releasing his name?
23 Or was that just an oral agreement that you guys had?

24 A. No.

25 Q. Was that just an oral agreement?

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Hooper - cross

1 A. Yes, that was an agreement that he was not going to --

2 Q. So it was an oral agreement, correct, not in writing?

3 A. He tells me he does not want his face to be seen so he
4 can't be identified physically but he is okay releasing his
5 name and profession, etc.

6 Q. And just for clarification, there was no nothing in writing
7 that was executed between the two of you, that was just simply
8 something that you discussed and you agreed possible, correct,
9 other than the release?

10 A. That's correct.

11 Q. Was there any descriptive handwriting, written, anything on
12 the release that would have suggested it?

13 THE COURT: No, no, no. I can read the release for
14 myself.

15 MR. K. LANDAU: Okay.

16 THE COURT: I understand your point.

17 MR. K. LANDAU: All right. No further questions.

18 Thank you.

19 THE COURT: Anything else?

20 MR. BURKE: No, your Honor.

21 THE COURT: So, Mr. Hooper, thank you very much. I'm
22 sure, I don't know what time it is there, but I will bet it is
23 not your normal waking hours, so thank you so much for making
24 yourself available and we will terminate the conversation now.

25 THE WITNESS: Thank you.

FC45almH

Livesey - direct

1 THE COURT: Bye-bye.

2 (phone testimony concluded)

3 THE COURT: Let's call the next witness who is?

4 MS. SCHARY: Mr. Livesey.

5 THE COURT: While Mr. Livesey is taking the stand, do
6 we have the original releases?

7 MS. SCHARY: I have them right here and can
8 authenticate them with the witness.

9 Would you like me to bring them up?

10 THE COURT: Yes, please.

11 BRUCE ROBERT LIVESEY,

12 called as a witness by the Defendant,

13 having been duly sworn, testified as follows:

14 DIRECT EXAMINATION

15 BY MS. SCHARY:

16 Q. Good afternoon, Mr. Livesey. Can you please tell me what
17 your occupation is?

18 A. I'm a journalist and television producer.

19 Q. How long have you worked as a journalist?

20 A. For more than 30 years.

21 Q. Are you currently employed full time with a news
22 organization?

23 A. Yes. I work for an online newspaper called The National
24 Observer.

25 Q. During your career as a journalist, how many different

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Livesey - direct

1 articles would you estimate that you personally authored?

2 A. There are hundreds.

3 Q. Have you authored any books?

4 A. Yes. I wrote a book about financial fraud in Canada's
5 financial district called "Thieves of Bay Street." It was
6 about financial fraud in Canada's financial industry. It was
7 published by Random House.

8 Q. I would like to show you what was previously marked as
9 Exhibit 43 for identification.

10 If I could approach the witness?

11 THE COURT: Yes. This is Defendant's Exhibit 43?

12 MS. SCHARY: Yes.

13 Q. Did you prepare this document?

14 A. Yes.

15 Q. What is it?

16 THE COURT: It is not admissible, that's what it is,
17 and I don't really want to waste time on these kinds of
18 background stuff.

19 MS. SCHARY: Okay. We will move on then.

20 THE COURT: Well, let me take the liberty of asking
21 some questions.

22 MS. SCHARY: Sure.

23 THE COURT: Do you know the plaintiff here,
24 Ms. Almeciga?

25 THE WITNESS: Yes.

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Livesey - direct

1 THE COURT: How did you first meet her?

2 THE WITNESS: She contacted me by phone in February of
3 2012.

4 THE COURT: And what did she say and what did you say?

5 THE WITNESS: She introduced herself as the wife of
6 Mr. Rosalio Reta, and the upshot of the conversation was that
7 she was asking if I might be interested in doing a second
8 interview with Mr. Reta.

9 THE COURT: Did there come a time when there was a
10 filmed interview of her?

11 THE WITNESS: Yes.

12 THE COURT: And what was your role in that?

13 THE WITNESS: I conducted -- I ran and conducted the
14 interview.

15 THE COURT: And what do you want to mark the release
16 as?

17 MS. SCHARY: We are going to mark the release of
18 Ms. Almeciga as Defendant's Exhibit 2 as it was previously
19 marked.

20 THE COURT: I will give the original to the witness
21 and if you can give me a copy?

22 MS. SCHARY: No problem.

23 THE COURT: Let me show you Defendant's Exhibit 2 for
24 identification; is that the release you are referring to?

25 MR. K. LANDAU: Your Honor --

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Livesey - direct

1 THE COURT: I'm sorry?

2 MR. K. LANDAU: I'm sorry. I would just like to state
3 an objection for the record.

4 First off, we have never, to this date, seen the
5 original. I was advised a few days ago that an original is in
6 the possession of defense counsel now. I don't know, we
7 haven't seen it, but the copy that was originally received has
8 black ink, blue ink, and it is much easier to distinguish
9 between several different people's handwritings. It looks as
10 if this -- we don't have any authentication purposes as to it
11 being true and accurate.

12 THE COURT: Well, I'm sorry, it is going to be
13 received.

14 MR. K. LANDAU: Sure.

15 THE COURT: But, just you will want to take a look at
16 it which you are more than welcome to, we will take a very
17 short break right before 2:00 and you can look at it then but,
18 just for the record, because I think the point you make is
19 relevant, it appears to be entirely in blue ink except for
20 the -- that is to say the handwritten portions of it, except
21 for the comments, the description of comments that we were
22 referring to in a previous witness' testimony that begins with
23 the word "Latina female." And that latter part is in black
24 ink.

25 All right. So, let's go back a step. Were you

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Livesey - direct

1 present when this document was signed?

2 THE WITNESS: Yes.

3 THE COURT: And was that before or after you had
4 filmed Ms. Almeciga?

5 THE WITNESS: It was afterwards.

6 THE COURT: Immediately after?

7 THE WITNESS: Yes.

8 THE COURT: Tell us what happened.

9 THE WITNESS: So, we did an interview with her in a
10 motel room in Woodville, this was in August of 2012. We
11 conducted the interview and afterwards we presented this
12 release to her and asked her to sign it, and she signed it.

13 THE COURT: And when you say we presented it, who
14 presented it?

15 THE WITNESS: Well, I presented it -- I was working
16 with Josiah Hooper who was the cameraman on this particular
17 shoot.

18 THE COURT: Well, physically, where were you when she
19 signed the release?

20 THE WITNESS: We were in the small room where we
21 conducted the interview so we had her sign it there.

22 THE COURT: And who handed her the release?

23 THE WITNESS: I did.

24 THE COURT: And what, if anything, did you say?

25 THE WITNESS: I said here is a release for the

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Livesey - direct

1 interview. And there wasn't much discussion about it. She
2 signed it.

3 THE COURT: And did you say anything about the
4 release?

5 THE WITNESS: Not really. My -- I mean she didn't ask
6 any questions about it. It's -- the writing indicates that we
7 have permission to use her interview --

8 THE COURT: No, I know what it says. I am asking what
9 you said to her, if anything.

10 THE WITNESS: I think it was more -- because
11 usually -- usually when releases like this are signed there is
12 not much discussion. It is sort of understood this is a
13 formality.

14 THE COURT: Well, that may be but my question is -- if
15 you don't remember, you don't remember.

16 THE WITNESS: Right.

17 THE COURT: But, if you do remember, what, if
18 anything, did you say other than here is a release, please
19 sign, or words to that effect.

20 THE WITNESS: I don't recall any other conversation,
21 your Honor.

22 THE COURT: And do you have a recollection whether she
23 read it?

24 THE WITNESS: No. Right now, no, I don't.

25 THE COURT: Is it your best recollection that she

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Livesey - direct

1 signed it more or less immediately?

2 THE WITNESS: Yes.

3 THE COURT: And what did you then do with it?

4 THE WITNESS: I gave it to Josiah Hooper.

5 THE COURT: Okay.

6 And was that the last time you saw it?

7 THE WITNESS: Yes.

8 THE COURT: All right.

9 Separate and apart from the release, did you have any
10 conversation with her at any time about concealing her
11 identity, not using her name or anything like that?

12 THE WITNESS: No. I mean there was a conversation
13 where -- with her two years later after the story had been
14 broadcast but not at that time.

15 THE COURT: I mean at the time.

16 THE WITNESS: At the time, no.

17 THE COURT: All right.

18 All right, counsel. Anything else?

19 BY MS. SCHARY:

20 Q. Mr. Livesey, have you ever seen Ms. Almeciga's signature
21 before she signed the release?

22 A. No.

23 Q. Never met her before?

24 A. No.

25 Q. Ever seen her again until today?

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Livesey - direct

1 A. No.

2 Q. When you were in Texas did you also interview Mr. Reta?

3 A. Yes.

4 Q. Where did you do that interview?

5 A. At the prison near Woodville.

6 Q. And did Mr. Reta sign a written release in connection with
7 his interview with you?

8 A. Yes.

9 Q. And I would like to --

10 THE COURT: I'm sorry. Before you got to that.

11 MS. SCHARY: Oh sure.

12 THE COURT: Counsel, my fault.

13 Going back to the release for Ms. Almeciga, the
14 information that's there other than her signature, was that
15 filled out by her, by you, by some third-party?

16 THE WITNESS: I filled out the top. I filled out
17 where it says "print name" and the date. The signature and
18 address was filled out by her.

19 THE COURT: So, under "person appearing" you wrote
20 Eryca spelled E-R-Y-C-A?

21 THE WITNESS: Uh-huh.

22 THE COURT: And under the print name at the bottom you
23 had Erica spelled E-R-I-C-A.

24 THE WITNESS: Yes.

25 THE COURT: How come?

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Livesey - direct

1 THE WITNESS: I must have had a mental confusion. I
2 would have filled this out before -- yeah. I must have just
3 simply got confused about how Erica was spelled.

4 THE COURT: How did you know how she spelled it either
5 way?

6 THE WITNESS: I might have -- possibly, again, I have
7 to recall. In our e-mail exchanges I would have seen how it's
8 spelled.

9 THE COURT: And, by the way, it was a hyphenated name
10 Almeciga-Reta; did she say she was married to Mr. Reta?

11 THE WITNESS: She indicated that she was the wife of
12 Mr. Reta. I -- yeah.

13 THE COURT: Ms. Almeciga, how do you spell your first
14 name?

15 PLAINTIFF: E-R-I-C-A.

16 THE COURT: So it is an I, not a Y?

17 PLAINTIFF: Correct.

18 THE COURT: Go ahead.

19 BY MS. SCHARY:

20 Q. Mr. Livesey, you had just mentioned a conversation after
21 the report was published that you had with Ms. Almeciga. Can
22 you describe that conversation?

23 A. Sorry. Say that again?

24 Q. In your testimony just now you mentioned that the only time
25 that you spoke with Ms. Almeciga, the only time she had raised

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Livesey - direct

1 a concern was after this was published. Do you recall when
2 that conversation took place?

3 A. I think this was in June of 2014.

4 Q. And do you recall -- and can you tell the Court what people
5 said in that conversation?

6 A. So, she contacted me and I called her as a result of her
7 e-mailing me and the conversation was that she was upset that
8 the story from the previous year had used her face without it
9 being covered and that this had become a problem for her
10 because she was in the middle of a custody battle with one of
11 her former partners of over one of her children and she
12 appeared to be using the fact that he had this relationship
13 with Mr. Reta as, I guess, ammunition in the custody battle
14 because of his notoriety as a former hitman. And so this was
15 my impression -- what she indicated -- with why she was upset.

16 Q. Is this the first time she raised this concern about seeing
17 her face in the CIR Report to you?

18 A. To me, yes.

19 Q. Okay.

20 And what would you have done at the time if
21 Ms. Almeciga had told you that she wanted her identity to be
22 concealed in the final video?

23 THE COURT: Hypothetical sustained.

24 MS. SCHARY: You can answer.

25 THE COURT: No. No, he can't.

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Livesey - direct

1 MS. SCHARY: Oh.

2 THE COURT: This is not a deposition.

3 MS. SCHARY: I thought you said -- okay.

4 BY MS. SCHARY:

5 Q. Ms. Almeciga did not ask you to blur her face, correct?

6 A. No.

7 Q. When you, in the past, have you interviewed subjects who
8 have asked for their faces to be concealed in an interview?

9 A. Yes.

10 Q. And what do you do in that situation?

11 A. We do it.

12 Q. And how do you do it?

13 A. There is two ways to do it. One, you should be interviewed
14 normally but then in post-production you blur it out; or the
15 sort of preferable way is you light the actual interview where
16 the subject is in the dark so they can't be identifiable.

17 Q. And in this interview was the subject interviewed in any
18 sort of special light like you just described?

19 A. No.

20 Q. We have discussed before that you had also interviewed
21 Mr. Reta while he was in the prison. Did Mr. Reta sign any
22 release in connection with his interview?

23 A. Yes.

24 THE COURT: Let me hand you --

25 What are you marking this one as?

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Livesey - direct

1 MS. SCHARY: This one is Defendant's Exhibit 33.

2 THE COURT: Do you have a copy for the Court?

3 BY MS. SCHARY:

4 Q. Mr. Livesey, can you take a look at the document just
5 handed to you by the Court?

6 A. Uh-huh.

7 Q. Can you recognize this document?

8 A. Yes.

9 Q. What is it?

10 A. This is the release of Mr. Reta.

11 Q. Just for the record, are you looking at the original right
12 now?

13 A. Yes.

14 Q. May I ask the Court to provide the copy as well so you can
15 compare?

16 THE COURT: Well, I have just compared it. It is a
17 good copy.

18 MS. SCHARY: Thank you, your Honor.

19 THE COURT: But of course, again, over the break we
20 will let plaintiff's counsel take a look at the original. It
21 is the same situation with respect to the color of ink.

22 Go ahead.

23 BY MS. SCHARY:

24 Q. Did you fill out any of the information on this release?

25 A. Yes. I filled out everything with the exception of

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Livesey - cross

1 signature.

2 Q. Did you write the --

3 A. Oh, sorry. With the exception also, there is some written
4 handwriting at the bottom which I did not fill out.

5 Q. Just for clarification, is the handwriting at the bottom a
6 description of the witness?

7 A. Yes.

8 Q. Thank you.

9 No further questions.

10 THE COURT: Okay. Cross-examination.

11 CROSS EXAMINATION

12 BY MR. K. LANDAU:

13 Q. Mr. Livesey, good afternoon, sir.

14 A. Good afternoon.

15 Q. You have been a journalist for how many years now?

16 A. More than 30.

17 Q. And you have given, I would suspect, numerous releases to
18 numerous subjects; is that correct?

19 A. Yes. I mean, because I work in Canada and largely for
20 Canadian television outlets we don't require releases. It is
21 only when we are working for American programs that we might,
22 so.

23 Q. Okay.

24 And have you worked for several American programs?

25 A. I have worked for -- I worked for a production company in

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Livesey - cross

1 Toronto that produced a TV series for American network and I
2 worked, in this case, with the CIR.

3 Q. And what is the purpose of a release?

4 A. The purpose of a release is basically it's legal permission
5 given by the subject that we can use the interview or content
6 of information they've given us as we feel suitable.

7 Q. So it is a legally binding document?

8 A. Yes. As far as I understand, yes.

9 Q. Okay.

10 Do you recall how long Mr. Reta was in prison for
11 prior to this interview?

12 A. Approximately six years.

13 Q. Do you recall when Erica suggested that she was married to
14 Mr. Reta?

15 A. It was in February of 2012.

16 Q. So he was in prison during that time?

17 A. Yes.

18 Q. Okay.

19 Did you obtain any type of marriage certificate to
20 verify the accuracy of those statements?

21 A. No.

22 Q. Did you do any independent investigation to verify the
23 accuracy of whether or not she was indeed married to Mr. Reta?

24 A. No.

25 Q. Did you look at her license?

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Livesey - cross

1 A. No.

2 Q. You didn't. Okay.

3 You indicated this afternoon that you had a mind --
4 whatever -- and you made some type of hand gesture when you
5 were spelling her name both at the top and the bottom which are
6 clearly different. Do you recall having stated that?

7 A. Yes.

8 Q. With a gentleman of your experience, you didn't think that
9 it was important to ensure that the accuracy of the actual
10 signature was correct?

11 THE COURT: Sustained.

12 MR. K. LANDAU: Okay. I can rephrase.

13 THE COURT: No, no, no. Don't bother.

14 MR. K. LANDAU: Okay.

15 THE COURT: It is not sufficiently material.

16 MR. K. LANDAU: Okay.

17 THE COURT: For today's purposes.

18 Everything that you want to inquire into may be
19 material for if the case goes to trial or to summary judgment
20 or anything else but I'm trying to keep the focus fairly narrow
21 for today.

22 MR. K. LANDAU: Sure.

23 BY MR. K. LANDAU:

24 Q. With respect to signature itself -- strike that.

25 THE COURT: I have a question.

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Livesey - cross

1 MR. K. LANDAU: Okay.

2 THE COURT: Did you fill in -- let's start with the
3 information at the top. Did you fill in that information
4 before you gave it to her to sign?

5 THE WITNESS: Yes.

6 THE COURT: Now, with respect to the information at
7 the bottom, by which I mean the "print name," the address, and
8 the date, just those three lines, are all these of those your
9 hand printing?

10 THE WITNESS: I filled in where it says "print name"
11 and I filled in the date. The signature and address she filled
12 in.

13 THE COURT: Okay.

14 And did you fill in that "print name" and that date
15 before or after she signed?

16 THE WITNESS: Before, I believe.

17 THE COURT: So, essentially you filled in the name,
18 you didn't have the address so you asked her to fill in the
19 address and also to sign it. Do I have that right?

20 THE WITNESS: Yes.

21 THE COURT: All right.

22 Go ahead, counsel.

23 BY MR. K. LANDAU:

24 Q. Mr. Livesey, it is your testimony you did not have the
25 address prior to the interview?

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Livesey - cross

1 A. Well, I had -- months earlier -- I happened to be passing
2 through Atlanta and she asked for a copy of the DVD of the
3 original story, the first interview being done with Mr. Reta.

4 Q. So you did know where Ms. Almeciga lived?

5 A. I didn't know -- at some point her address, yes, months
6 earlier.

7 THE COURT: What I understood you to mean, and correct
8 me if I have it wrong, is that at the moment you were giving
9 her this release you didn't remember --

10 THE WITNESS: No.

11 THE COURT: -- what her exact address was.

12 THE WITNESS: No.

13 THE COURT: So you asked her to fill it in.

14 THE WITNESS: Yes.

15 THE COURT: All right.

16 BY MR. K. LANDAU:

17 Q. You indicated earlier today in your testimony that
18 Ms. Almeciga didn't raise concerns until I think you indicated
19 2014 about her identity being revealed?

20 A. Yes.

21 Q. During your deposition you indicated that it was in 2013
22 that she raised those concerns?

23 A. At the time of the deposition I was a little bit confused
24 about when various stories had run. A lot of time had
25 transpired but it has since come to my attention since we have

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Livesey - cross

1 been doing this case that it was in fact -- it was in June of
2 2014.

3 Q. How has it come to your attention?

4 A. Well, the e-mails that I sent to CIR indicating that she
5 had these concerns relevant from that time period.

6 So, there is an e-mail --

7 Q. So you are changing your testimony from your deposition?

8 THE COURT: Sustained.

9 Q. The date on the release was changed from August 14th to the
10 15th. Are you the individual that crossed that out and changed
11 the date?

12 A. Yes.

13 Q. And why was that?

14 A. I got the date wrong in my first writing it.

15 Q. Well, you wrote that before or after the interview?

16 A. I can't remember. It was a long time ago. I mean, you are
17 asking me if I remember that in fact it was the 15th or the
18 14th and whether at what point I remember? I can't remember.

19 Q. Out of curiosity, why do you fill out the -- let's start
20 with the top, why do you fill out the top portions?

21 A. Because it is more practical.

22 Q. What, for time? It saves seconds? Or is it just for
23 accuracy?

24 MR. BURKE: Objection.

25 A. Well, for both. They don't necessarily -- might not

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Livesey - cross

1 remember the date or if they do it is more practical. More for
2 time.

3 Q. And how about the bottom, though? Why do you do that for
4 the bottom?

5 A. Again, I fill out the things that, you know, like such as
6 the name and the date which I know so there is no debate about
7 it.

8 Q. Okay. Is it your testimony that you have never seen Erica
9 sign her name prior to this date?

10 A. That's correct.

11 Q. And you weren't concerned that it was a different spelling
12 than what you would have otherwise seen through e-mail or just
13 on the release itself?

14 A. No.

15 Q. You weren't concerned about that?

16 A. I'm not quite sure what you are asking.

17 Q. Well, it is evident that the signature is spelled
18 E-R-Y-C-A?

19 A. Yes.

20 Q. Yet what you printed is E-R-I-C-A. And you didn't feel
21 that that was important?

22 THE COURT: No. I think that's a misleading question
23 because the way it is spelled at the top is E-R-Y-C-A which I
24 think the witness indicated he got from an e-mail or something
25 like that?

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Livesey - cross

1 THE WITNESS: Yes, possibly.

2 THE COURT: And that corresponds to the signature.

3 MR. K. LANDAU: But --

4 THE COURT: Right, he --

5 MR. K. LANDAU: He must have also gotten E-R-I-C-A
6 from an e-mail as well.

7 MR. BURKE: Objection. Speculation.

8 THE WITNESS: Listen. I can't remember why. Again,
9 it was just --

10 THE COURT: I'm going to rephrase it.

11 Let's talk about timing. The lines at the top would
12 have been filled out moments before, hours before, days before?

13 THE WITNESS: Moments before.

14 THE COURT: Moments before.

15 So, you didn't fill out the top until after the
16 shooting?

17 THE WITNESS: Yes. My recollection was that -- so,
18 we -- that's usually -- yes. I filled it out after we finished
19 the interview.

20 THE COURT: The two lines on the bottom that you
21 filled out, the "print name" and the date were filled out at
22 the same time as you filled out the top?

23 THE WITNESS: I believe so, yes.

24 THE COURT: All right.

25 And both of these were done before she signed?

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Livesey - cross

1 THE WITNESS: I believe so, yes. Yeah.

2 THE COURT: Okay.

3 Go ahead, counsel.

4 BY MR. K. LANDAU:

5 Q. Why would you wait until after the interview to have
6 Ms. Almeciga purportedly sign a release?

7 A. Again, sort of common industry practice that you do that.
8 And it is usually you have a bit more time, these formalities
9 that you are going through. The cameraman is usually taking
10 his equipment down so you deal with these sort of you might
11 call them bureaucratic things afterwards. It is just a little
12 more practical.

13 Q. Do you recall having emailed, I believe it was Mr. Reta, as
14 to the fact that it is difficult to get anyone on camera given
15 this dangerous subject matter?

16 A. I don't recall specifically a date but I might have
17 indicated that, yes.

18 Q. And if it is difficult to get anyone on camera, given this
19 dangerous subject matter, then why would you wait until after
20 the interview to get a release?

21 A. I'm not quite sure I'm following your logic.

22 Q. Well, wouldn't it be more practical to ensure that the
23 subject is fully aware of whatever it is that this release
24 states prior to them giving any information as opposed to after
25 they already give it?

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Livesey - cross

1 MR. BURKE: Objection. Argumentative.

2 THE COURT: Well --

3 THE WITNESS: I --

4 THE COURT: Excuse me. Excuse me. Not necessarily on
5 those grounds but on grounds that it calls for a hypothetical
6 and asks his opinion about a hypothetical, the objection is
7 sustained.

8 I do raise, for benefit of both counsel, an issue that
9 I do not want questioning on today at any rate because it is
10 not within the time scope of this hearing, but I have a
11 question in my mind as to whether this is an enforceable
12 release contract. As I understand it, it is a form that is
13 presented after the fact to the person so they're not -- their
14 agreement is not being sought before they do the filming, it is
15 not explained to them. It is, at least in this case according
16 to the witnesses' testimony, signed essentially immediately so
17 basically a "sign here" kind of situation. It's not clear to
18 me that there is any consideration.

19 I raise these as questions and we will have to have it
20 addressed -- not now -- maybe we will include that in the final
21 briefing that we have after the hearing is over.

22 But, go ahead. Any other questions for this witness?

23 MR. K. LANDAU: No, your Honor. Thank you.

24 THE COURT: Anything else?

25 MS. SCHARY: I have one, very briefly.

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Livesey - redirect

1 THE COURT: Yes.

2 REDIRECT EXAMINATION

3 BY MS. SCHARY:

4 Q. Mr. Livesey, Mr. Landau was asking you about the spelling
5 of plaintiff's name. I would like to offer to show you what's
6 been marked for identification as Defendant's Exhibit 51.

7 Mr. Livesey, can you identify the document for me?

8 A. I don't have it.

9 Q. Sorry. I thought you were giving it to the witness.

10 Here you go. Can you please identify the document for
11 the Court?

12 A. This seems to be a correspondence between me and
13 Ms. Almeciga.

14 Q. And how -- I am just going to direct your attention to the
15 portion of the e-mail dated Friday, February 8, 2013, 10:26
16 a.m. Can you tell the Court what the signature by the person
17 sending that e-mail is?

18 A. It's -- you mean where it says from?

19 Q. I am directing you to "thanks."

20 A. You mean it says Eryca Reta.

21 Q. How is Erica spelled?

22 A. With a Y.

23 MS. SCHARY: Thank you. No further questions.

24 THE COURT: Are you offering this?

25 MS. SCHARY: I am offering it into evidence, yes.

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1 THE COURT: Any objection?

2 MR. K. LANDAU: No objection.

3 THE COURT: Received.

4 (Defendant's Exhibit 51 received in evidence)

5 MR. K. LANDAU: Your Honor, in the interest of time
6 with summation, we will provide correspondence that reflects
7 Ms. Almeciga's name being spelled with an I as well.

8 THE COURT: Okay.

9 Thank you so much. You may step down. Thank you.

10 (Witness excused)

11 MR. BURKE: Your Honor, as a housekeeping matter,
12 should we do Mr. Talbot now or wait until --

13 THE COURT: I think we will have to wait.

14 Has the expert arrived?

15 MR. K. LANDAU: I believe so, your Honor. Yes.

16 THE COURT: Is she in the courtroom or in the witness
17 room?

18 MR. K. LANDAU: No, outside.

19 THE COURT: She's in the witness room. Very good.

20 So, this is the only break we are going to have a
21 chance to take between now and 4:30 so make good use of it. I
22 will ask defense counsel to not only retrieve the exhibits from
23 the previous witness but also to show plaintiff's counsel the
24 originals of the two documents.

25 Very good, we will see you at 2:00.

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1 (Recess)

2 THE COURT: Let's call the next witness.

3 MR. K. LANDAU: Thank you, your Honor.

4 Going out of order --

5 THE COURT: Yes.

6 MR. K. LANDAU: -- per the schedule, plaintiff would
7 like to call Ms. Wendy Carlson, our expert, to the stand.

8 THE COURT: Ms. Carlson?

9 Someone should take the exhibits from the previous
10 witness.

11 WENDY CARLSON,

12 called as a witness by the Plaintiff,

13 having been duly sworn, testified as follows:

14 THE COURT: So, Ms. Carlson, thank you for making
15 yourself available, I think you came in from Colorado?

16 THE WITNESS: Texas.

17 THE COURT: I have a few questions. This is, just so
18 you know, the hearing, this is a double-hearing where both the
19 defendants have brought a sanctions motion against the
20 plaintiff that doesn't particularly relate to you other than
21 very peripherally and no one has made any accusations of
22 misconduct with respect to you in any respect, but it is also a
23 Daubert hearing --

24 THE WITNESS: Okay.

25 THE COURT: -- because there has been a challenge to

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1 the admissibility of your testimony, and so let me put some
2 basic questions and then I will turn it over to counsel.

3 Who are you?

4 THE WITNESS: My name is Wendy Carlson.

5 C-A-R-L-S-O-N.

6 THE COURT: So, tell us a little bit about your
7 background.

8 THE WITNESS: Where would you like me to begin?

9 THE COURT: Well, I guess with your basic education
10 before your education in this field.

11 THE WITNESS: Okay. I graduated high school in
12 Arvada, Colorado, from there I received my cosmetology license.
13 I also, from that point, went into the field of law and was a
14 receptionist promoted to legal secretary/legal assistant in a
15 handful of law firms in Denver, Colorado. And, at probably
16 about 10 years into that, I then decided to attend the School
17 of the International -- or the International School of Forensic
18 Document Examination, and that was a two-year apprenticeship
19 and that's where I began doing this.

20 THE COURT: And approximately when was that?

21 THE WITNESS: I beg your pardon?

22 THE COURT: Approximately when was it that you
23 graduated from that?

24 THE WITNESS: I graduated in 2009.

25 THE COURT: And you have been working as a document

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1 examiner ever since?

2 THE WITNESS: Yes, I have. And I actually was court
3 qualified for the first time in 2008 while I was attending
4 school.

5 THE COURT: So, do you have your report in front of
6 you?

7 THE WITNESS: I have it with me, yes.

8 THE COURT: So why don't you pull that out.

9 So, you were asked to make a comparison between which
10 documents?

11 THE WITNESS: I was originally asked to make a
12 comparison between the Erica Almeciga-Reta signature on a
13 release and -- if I can look at the title of that I can tell
14 you better -- a standard appearance release with a signature of
15 Erica Almeciga-Reta, and I was asked to compare that to
16 signatures that were submitted to me as purported known
17 signatures and those included five pages of multiple signatures
18 and handwriting. And subsequently I was asked to do a further
19 comparison on some signatures that apparently have been
20 entitled or described as Georgia documents.

21 MS. SCHARY: Objection. This was not included in the
22 witness' submitted report about the Georgia documents.

23 THE COURT: That's true, and therefore it may not be
24 admissible at trial, but for today's more limited purposes I
25 will allow it to be discussed, fully preserving any objections

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1 to its admissibility at trial if there is a trial in this case.

2 But let me go to the first part of the comparison, the
3 comparison between the release and the signatures, the "known
4 signatures" you were provided. Who provided these materials to
5 you?

6 THE WITNESS: Mr. Landau; I don't remember if it was
7 specifically Zach or Kevin.

8 THE COURT: Someone from the plaintiff's law firm?

9 THE WITNESS: Yes.

10 THE COURT: And did they tell you that there had been
11 a previous expert who had been retained to make the same
12 comparison?

13 THE WITNESS: I do have some memory of that, that
14 there was a previous expert. But I don't know what -- to what
15 extent he worked on this.

16 THE COURT: And would it have been relevant to you to
17 know what the previous expert had done? Or was it something
18 that you preferred to be shielded from?

19 THE WITNESS: Specifically, I prefer not to see
20 another person's report unless I'm actually doing a peer
21 review. If I am doing an individual examination I would just
22 prefer to do that with my own information.

23 THE COURT: Did they tell you why they, having had a
24 previous expert, they were now coming to you?

25 THE WITNESS: I don't recall. I don't know if the

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1 expert was not available. I don't recall specifically.

2 THE COURT: Did they place a time limit on your
3 undertaking your comparison?

4 THE WITNESS: I believe so. I believe it was a pretty
5 short time frame.

6 THE COURT: Did they explain why that was so?

7 THE WITNESS: That's maybe -- I'm at a loss as to
8 maybe this other expert wasn't available and they needed an
9 answer quickly. That's all my understanding was.

10 THE COURT: What, if anything, did they say to you
11 about why they needed you to turn this around so quickly?

12 THE WITNESS: I don't know. I would have to look at
13 my file to see if I have an answer for that.

14 THE COURT: Did you do -- before you made your
15 comparison, did you undertake any investigation to determine
16 whether in fact what was being presented to you as the known
17 signatures were in fact the known signatures of the plaintiff?

18 THE WITNESS: No, sir. No, because I did not speak
19 with the plaintiff, I had no contact with her, and I just
20 examined the signatures I was provided to the questioned to
21 determine if it was the same author.

22 THE COURT: So, if you determined that the release and
23 the known signatures were of different people you would have no
24 knowledge which of those might be a forgery?

25 THE WITNESS: Correct. That's correct. I would have

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1 no knowledge of whether the multitude of purported knowns were
2 actually authentic or if the other was actually authentic.

3 THE COURT: Right. So, in your profession when you
4 have wanted to know or be able to verify in some way that the
5 "known" signatures were in fact the signatures of the person
6 they purported to be of?

7 THE WITNESS: Okay. What is rest of your question? I
8 guess I --

9 THE COURT: The question is, for example, you could
10 have asked the plaintiff to come out and in your presence sign
11 her name, right?

12 THE WITNESS: I could have.

13 THE COURT: Or you could have undertaken some other
14 way of ascertaining her known signature by seeing, for example,
15 whether she had ever filed something in court that had been
16 signed that you could then look at or something like that.

17 So, my question is why didn't you undertake those
18 efforts?

19 THE WITNESS: Generally speaking, when I'm doing an
20 examination I'm really, more than anything, determining if one
21 author signed both questioned and known documents. As far as
22 it being specifically from a specific person, that does not
23 apply so much, that kind of an ambiguous statement, to outcome.
24 It is a matter if I need to determine authorship.

25 THE COURT: So, I am looking at the conclusion of your

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1 report on page -- beginning at the bottom of page 7 and you
2 say: Based on my scientific examination and a lack of
3 agreement of the unique identifiable characteristics in the
4 questioned signature, it is my professional, expert opinion
5 that the Erica Almeciga signature on the questioned document
6 was not signed by Erica Almeciga.

7 Let me stop there. In fact, you don't know that one
8 way or the other. It could have been that it was signed, based
9 on what you saw, it could have been that it was signed by the
10 real Erica Almeciga and the ones that you were provided that
11 were "the known signatures" but which you did not independently
12 have any knowledge of whether they were the known signatures,
13 those could have been the forgery, yes?

14 THE WITNESS: Yes. Yes. They were just two different
15 authors is all that --

16 THE COURT: So all you know, all that you are opining,
17 really, is that the signatures on the "known" and the
18 signatures on the release are not by the same person.

19 THE WITNESS: Correct.

20 THE COURT: Now, you say in a number of places in your
21 report that you have made use of scientific principles and also
22 generally accepted questioned document examiner principles and
23 methods. What are those that you used here?

24 THE WITNESS: The methodology that I used is the same
25 as used by the FBI and the Secret Service, it is called the

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1 A --

2 THE COURT: Well, I don't hold that against you.

3 THE WITNESS: It is called the ACEV methodology. It
4 stands for Analyze, Compare, Evaluate and Verify, and that
5 methodology has been generally accepted in every court of law
6 that I have testified in as well as it was affirmed and
7 accepted in the Court of Appeals in the Pettis case.

8 THE COURT: That's useful to know but I'm really --
9 what I want to know is what are those principles? So the
10 initials are ACEV, yes?

11 THE WITNESS: Yes.

12 THE COURT: Okay, so tell me about A, C, and so forth.

13 THE WITNESS: Sure.

14 The analyze, what I do when I receive the documents,
15 the first thing I do is I take the purported known documents
16 that I received or signatures that I received or handwriting
17 samples, and I do an examination on those. I am analyzing them
18 to determine the patterns of writing of the author or the
19 repetition because what we are looking at is not necessarily
20 handwriting, it is brain writing, so it is coming from the
21 patterns that have already been established in the person's
22 mind.

23 THE COURT: I saw that in your report.

24 And you're not a neuroscientist, are you?

25 THE WITNESS: No, I'm not.

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1 THE COURT: So, what is the basis for saying that this
2 is a function of particular patterns in the brain?

3 THE WITNESS: There have been studies done with the
4 brain mapping technology that medical institutes use to show
5 where in the brain the activity lies for certain functions, and
6 handwriting and a certain movements, finger movements, are
7 different within certain areas of the brain so the handwriting
8 comes from that area of the brain whether it's being written,
9 you know, by a particular part of the body, the hand or the
10 foot or the mouth, that part of the brain is what lights up to
11 show that the handwriting function comes from that area of the
12 brain.

13 THE COURT: So, do you know whether those studies have
14 ever been the subject of a Daubert hearing?

15 THE WITNESS: I do not know that answer.

16 THE COURT: And, by the way, would it really matter?
17 Isn't your basic premise that when someone writes and
18 particularly when they sign their name they do it in a
19 distinctive way?

20 THE WITNESS: Generally speaking, yes, because they
21 have --

22 THE COURT: That could be whether it came from the
23 brain or from -- forgive me -- their rear end. This is that
24 premise that allows you to make the comparison, right?

25 THE WITNESS: Right. And the fact that it is so

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1 practiced -- a person is so practiced in signing their name --
2 it is really automatic like making a fist -- you don't think
3 about it, you just do it.

4 THE COURT: So, now turning -- how about, before we
5 get back to this so there are cases, of course, where people
6 try to purposely try to forge someone's signature and they're
7 copying from a known signature and so forth. How do you, under
8 the -- we are still on the A part of the -- how do you
9 distinguish that kind of forgery?

10 THE WITNESS: Really what the founding fathers -- and
11 I believe it is in my report -- spoke of and agreed to, the
12 founding fathers of document examination agree that a single
13 significant difference within the fundamental structure of the
14 writing would preclude common authorship.

15 THE COURT: By the way, there were no founding mothers
16 so why should I pay any attention to it?

17 THE WITNESS: You know, all I know is one of them had
18 to -- you know, was a big time person with the Lindbergh
19 kidnapping.

20 THE COURT: Mr. Osborn.

21 THE WITNESS: Yes.

22 THE COURT: I am old enough to have met Mr. Osborn,
23 so.

24 THE WITNESS: Yes.

25 THE COURT: Anyway, getting back to -- I'm not so much

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1 interested in the history, I'm just saying if you or someone
2 with similar training is confronted with what appears to be to
3 the everyday layperson the identical signature to a known
4 signature, how do you go about determining whether it really is
5 the known signature or a forgery?

6 THE WITNESS: Well, what I do then is in my
7 examination, it kind of goes into that area of it, what I am
8 looking for are, again, habits that are repeatedly seen,
9 patterns within the writing; Does this person make a loop
10 clockwise or counterclockwise? What do the ending stroke, the
11 beginning stroke, the connecting strokes look like? I am
12 looking at a portion of one letter to another like ratios. One
13 thing that I really find to be very helpful and significant are
14 the angles in writing.

15 For example, if I am drawing an angle from the top of
16 maybe the first initial in the first name to the first initial
17 in the last name, you sign your name a specific way every time
18 so that angle is going to be very similar most every time. If
19 I sign your name pretending to forge your name, I'm not going
20 to get those same angles and that's where forgers really mess
21 up, because forgers are working on what the letters or the
22 words or the names look like, they're not noticing the space
23 around it and that's where a lot of mistakes are made, are in
24 the spacing that surrounds the letters.

25 THE COURT: All right. Now, how do you distinguish

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1 that situation from the situation where someone -- well, let me
2 rephrase the question.

3 When someone signs their name they don't always sign
4 it exactly the same, true?

5 THE WITNESS: Correct. That's true.

6 THE COURT: So, how do you distinguish a situation
7 where there was a slightly different spacing but it was really
8 the same person from the one where there was a slightly
9 different spacing because it was a forgery?

10 THE WITNESS: There are variables within handwriting
11 so someone is going to sign different every time. What you
12 will find is if you have enough samples to use in a comparative
13 matter, a document examiner is able to find out how large that
14 variation might be. Some people have a very small range of
15 variation so their signature looks very, very similar every
16 time. Others, obviously the variation is greater and there is
17 going to be some differences. But, in that we are still able
18 to make a determination as to authorship by the certain
19 idiosyncrasies that are specific to that particular author,
20 whether --

21 THE COURT: So, how many -- to do that kind of
22 comparison how many of the known signatures would you need?

23 THE WITNESS: You know, that's really -- that has been
24 up for debate for a long time. I know that a lot of document
25 examiners, myself included, I would prefer -- I ask for a half

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1 a dozen to a dozen. That at least gives me a decent sampling.
2 Others request 25 or more. I feel like if you get too many
3 signatures you have got so much information it is overwhelming
4 and you tend to get lost in it.

5 THE COURT: Now, I have the impression but correct me
6 if I have this wrong, that what you're chiefly relying on here
7 is not what we would call science in the sense of physic or
8 chemistry or biology, but it is really more experience, both
9 your experience an the experience of examiners before you, so
10 that through that experience you know what to look for like the
11 examples you gave me, in a way that the everyday layperson
12 would not.

13 THE WITNESS: Correct.

14 THE COURT: Do I have that right?

15 THE WITNESS: Yes.

16 THE COURT: Okay.

17 So, going to the comparison you did here, you first --
18 I'm looking at page 6 of your report and -- by the way, is it
19 fair to say that the comparison between the release and the
20 known signatures, they weren't even close, right? It was not
21 like an attempted forgery, it was like very different.

22 THE WITNESS: Yes, correct.

23 THE COURT: So even a layperson probably could have
24 seen that they were very different, yes?

25 THE WITNESS: Yes.

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1 THE COURT: So, but you say on page 6 in your
2 conclusions you say, "The Erica Almeciga-Reta signature on the
3 questioned document is written with great fluidity and a faster
4 speed, unlike the known signatures that display a slower, more
5 methodical and unrefined style of writing."

6 So, I have two questions about that. First is how did
7 you determine that; and second of all, which way does that cut?

8 THE WITNESS: Well, the first part of the question,
9 how did I determine it, in my experience and in my instruction
10 and training, a person who writes with quick speed and great
11 fluidity, the lines are generally less shaky, they're
12 generally -- I'm trying to think of how to say this without
13 just describing my own definition. It's there is great -- I'm
14 not saying that right. There is great rapid movement and you
15 can see even in the way the Ms and the Ns and the humps and the
16 pointed portions of the name are formed, there is not a
17 stopping and starting and pausing, there is no shakiness in the
18 line, there is no pen globs or ink blobs in the writing and you
19 will see more slower methodical writing a person draws the pen
20 slower -- or the write instrument slower so you will see more
21 ink bleed out of the pen, you will see more shakiness, you will
22 see more deposits and I guess chattering of the ink more than
23 anything is a better way to say that.

24 THE COURT: So, in this case the signature on the
25 release was done with fluidity and speed, yes?

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1 THE WITNESS: Yes.

2 THE COURT: The known signatures were done more
3 slowly, more methodically. Wouldn't that be equally
4 consistent, then, or maybe even more consistent, with someone
5 trying to fake the known signatures so they're going very
6 slowly and trying to make it very different from, as opposed to
7 the release where the person signs -- zip -- doesn't sound like
8 they're trying to commit a forgery?

9 THE WITNESS: Right. Yes. And what are you saying
10 has a good foundation to it and yes you are correct that
11 somebody could potentially forge the known documents. However,
12 in that the -- again, the unconscious part of the writing will
13 also reveal itself in examination so that person who is
14 attempting to disguise or change their writing, those habits
15 and unconscious things will still appear because they're not
16 aware of them.

17 THE COURT: Now, you say in the second item here, the
18 first name is misspelled meaning what?

19 THE WITNESS: Meaning it was spelled differently than
20 what I received as purported knowns.

21 THE COURT: So, again, you don't know of your personal
22 knowledge whether Ms. Almeciga spells her name with a Y or an
23 I, correct?

24 THE WITNESS: Not specifically. I know I received an
25 affidavit with her name spelled as an I and that is to the best

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1 of my knowledge.

2 THE COURT: Why would someone who is trying to commit
3 a forgery misspell a name?

4 THE WITNESS: You know, I don't have a reason for
5 that. I have seen that in a handful of cases and I don't know
6 if it is just out of ignorance or -- I really don't have an
7 answer for that.

8 THE COURT: They -- I mean, sometimes misspellings can
9 occur by accident but not when you are spelling your own name.

10 THE WITNESS: Right.

11 THE COURT: And why would someone who is trying to
12 commit a forgery of the name "Erica" spell it in a very unusual
13 way with a Y as opposed to the ordinary way with an I?

14 THE WITNESS: Right. I don't know the answer to that.
15 I have never seen that spelling before.

16 MR. K. LANDAU: Your Honor, if I may briefly interject
17 for clarification?

18 I don't know if you want us to do a side bar or --

19 THE COURT: No, go ahead. If you have questions about
20 any of these things I'm asking you are going to be given a full
21 opportunity to ask questions.

22 MR. K. LANDAU: Sure. Okay. That's fine.

23 THE COURT: So, in number 4, I can't help but mention
24 this, please forgive me in advance, you say: The C overlaps
25 the Y, U-L-I-K-E. So, people do occasionally make

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1 misspellings.

2 THE WITNESS: Right.

3 THE COURT: Right, but not usually of their name. I
4 understand the difference.

5 You were saying that you have, more recently done a
6 comparison between the release document and the, what we have
7 been calling the Georgia documents meaning certain documents
8 that were filed, purportedly, by Ms. Almeciga in a court in
9 Georgia.

10 Is that the comparison you did? Or did you do that
11 with the known? Or both?

12 THE WITNESS: Both.

13 THE COURT: Both.

14 THE WITNESS: Yes.

15 THE COURT: What did you conclude from that
16 comparison?

17 THE WITNESS: With the Georgia documents?

18 THE COURT: Yes.

19 THE WITNESS: That in my opinion this is a third
20 author.

21 THE COURT: Pardon?

22 THE WITNESS: That's a third author.

23 THE COURT: A third author.

24 THE WITNESS: Yes. Those signatures do not match
25 either the purported knowns or the release in specificity to

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1 how that was written. They're different. There are too many
2 differences to account for similar authorship.

3 THE COURT: Is it a fair statement that they are at
4 least closer to the release than what we have been calling the
5 known signatures?

6 THE WITNESS: Yes.

7 THE COURT: I am incorrigible so I will probably have
8 more questions for you later, but let's turn it over to
9 counsel. And I am happy to have plaintiff's counsel, if you
10 want to because you are ultimately the party who is introducing
11 this testimony, on the other hand, most of the challenge to
12 this witness has come from your adversary. If you prefer to
13 have them go first, that's fine with me too. I will make it
14 your choice.

15 MR. K. LANDAU: Thank you, your Honor.

16 Preliminarily, at this point, would you prefer that we
17 continue to go through Ms. Carlson's experience or for the
18 purposes of this hearing is she admitted under 702?

19 THE COURT: Well, I don't know. For the purposes of
20 this hearing I'm making no findings until I receive summations
21 at the close of all the hearing, so --

22 MR. K. LANDAU: Could you prefer --

23 THE COURT: I'm making no determination yet, that's
24 one of the -- they're challenging her qualifications, they're
25 challenging her expertise, they're challenging her methodology

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1 and -- oh, I did forget one question and that's why I thought
2 you might want them to go first, so then you would respond to
3 their views, but I did forget. We talked about A; take me
4 through C, E and V.

5 THE WITNESS: The A is analyze. I examine and analyze
6 the purported knowns to determine that they were authored by
7 the same person, that all the knowns were authored by the same
8 person. And once I make that determination I then take the
9 questioned signature --

10 THE COURT: How many knowns were you given?

11 THE WITNESS: You know, I would have to go through and
12 count. Let me take a look at my report and see if it breaks it
13 down a little bit. I have five pages but there were multiple
14 signatures on those five pages, or handwritings.

15 THE COURT: Go ahead.

16 THE WITNESS: What I do, how I do that analyze, I
17 analyze all of those known signatures, I vertically enlarge
18 them 200 percent for easier examination. I do my analysis. I
19 then take the questioned signature, also enlarge that to 200
20 percent and do the comparison, which is C. I compare to
21 determine similarities or dissimilarities within the writings
22 and make a determination as to what is really significant, what
23 is just maybe a factor of writing that needs to be taken
24 accounted for. And then we move to E which is evaluation and I
25 take my findings of similarities and dissimilarities and

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1 evaluate the weight of the evidence that I have and make a
2 determination as to authorship, whether similar authorship,
3 different authorship.

4 In many cases what I do is verification. I don't do
5 that with every case. With science I know that every
6 experiment is not verified. With this case I felt like the
7 differences were so dramatic and striking that I did not do a
8 verification. I didn't feel it was necessary in this matter.

9 THE COURT: But what would you mean, in the ordinary
10 case or the less extreme case, by verification?

11 THE WITNESS: What I would do is I would ask another
12 qualified document examiner -- court-qualified document
13 examiner to do independent review and examination of the
14 documents that I received without knowledge of what my findings
15 are, send those documents to them, have them do an independent
16 examination and once they're finished with it, they would
17 contact me and we would go over findings together to determine
18 what their outcome was.

19 THE COURT: So now in this case you knew that there
20 had been an earlier expert, yes?

21 THE WITNESS: Yes.

22 THE COURT: And in fact it was my understanding it was
23 the guy who you studied under, yes?

24 THE WITNESS: Yes.

25 THE COURT: And so, after you had reached your

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Carlson - cross

1 conclusions, why didn't you do that kind of verification with
2 him since he was already familiar with the matters?

3 THE WITNESS: You know, I think it was such a short
4 time frame that I didn't do that.

5 THE COURT: All right.

6 Go ahead. So, we are going to start with questioning
7 by defense counsel.

8 MS. SCHARY: Okay.

9 CROSS EXAMINATION

10 BY MS. SCHARY:

11 Q. Ms. Carlson, you said that you had five known signatures;
12 is that correct?

13 A. I would have to look again. I had five pages that have
14 known signatures on them.

15 Q. That's a pretty small number because you said you usually
16 get six to 12; is that right?

17 MR. K. LANDAU: Objection, your Honor.

18 THE COURT: Yes. The question is whether she had five
19 signatures, not whether -- all she said so far is she had five
20 pages. Do we have those pages?

21 THE WITNESS: Yes; and there are nine signatures on
22 those five pages.

23 THE COURT: So nine signatures. All right.

24 THE WITNESS: Correct.

25 BY MS. SCHARY:

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Carlson - cross

1 Q. And none of those signatures are from 2012; isn't that
2 right?

3 A. That's the best of my knowledge, that they are not from
4 2012. I believe they're 2014 and then a couple of them I did
5 not know what date they were.

6 MR. K. LANDAU: Objection.

7 Q. And you were asked -- sorry.

8 MR. K. LANDAU: Objection. Relevance.

9 MS. SCHARY: And you never asked?

10 THE COURT: I will allow it.

11 Go ahead.

12 MS. SCHARY: Overruled?

13 THE COURT: Yes, I overruled.

14 BY MS. SCHARY:

15 Q. You never requested that she provide anything from 2012?

16 A. No. Not specifically. I just asked Mr. Landau to provide
17 for me because I did not talk with her specifically, she didn't
18 retain me, Mr. Landau did, and as I was communicating with him
19 I asked him if he would give me probably a half a dozen to a
20 dozen signatures to use.

21 Q. Well now, look. Actually at your deposition we talked
22 about the way that you were retained --

23 THE COURT: No, no. Just put questions, counsel.

24 Q. I would like to show you a document that's been previously
25 marked for identification as Exhibit 31. Ms. Carlson, do you

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Carlson - cross

1 recognize this document?

2 A. Yes. Vaguely, yes, I recognize it.

3 MR. K. LANDAU: Objection, your Honor. Attorney
4 work-product. Relevance.

5 MS. SCHARY: Your Honor, this was provided to us by
6 Mr. Landau at Ms. Carlson's deposition.

7 THE COURT: First of all, I don't think it is work
8 product but, second of all, assuming it is work product, it was
9 waived if it was provided. And I think it is relevant so
10 Exhibit 31 is received.

11 (Defendant's Exhibit 31 received in evidence)

12 BY MS. SCHARY:

13 Q. Ms. Carlson, I'm going to direct your attention to the
14 third paragraph in this e-mail; if you will take a second to
15 read that?

16 A. Beginning with "Anyway or likewise?"

17 Q. "Anyway."

18 A. Yes, I have read it.

19 Q. Okay.

20 And so my question is, did you request documents from
21 Mr. Landau or did Mr. Landau just send you five documents for
22 you to review asking for a report tomorrow?

23 A. To my understanding he just sent them to me. That's my
24 protocol to ask for those, and if he just sent them to me then
25 I was wrong in my statement to you.

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Carlson - cross

1 Q. Thank you.

2 THE COURT: So let me just ask a different question.
3 This is an interesting document.

4 In the third paragraph of this e-mail from plaintiff's
5 counsel to you, with a copy to one of his colleagues says,
6 "Anyway, we originally gave the questioned document to
7 Mr. Baggett in August 2014 before we knew you. The questioned
8 document was a release that defendant CIR forged. Mr. Baggett
9 compared this document to five documents with Ms. Almeciga's
10 known signatures. He then wrote up a report which is attached
11 hereto. This report was supplied to defense counsel before the
12 lawsuit was filed."

13 So, you did have the report of Mr. Baggett, yes?

14 THE WITNESS: When I went back and reviewed my
15 e-mails, yes, it was attached. I don't recall reviewing it
16 because I was doing this beginning from scratch, not as a peer
17 review, so I wouldn't have referenced his report.

18 THE COURT: Bay the way, you had worked previously for
19 this law firm, yes?

20 THE WITNESS: Yes. They retained me in one other
21 matter recently.

22 THE COURT: Yes. You were a rock star for us in our
23 last case, the inimitable fashion of plaintiff's style, he
24 seems to have thought you did an adequate job.

25 So now he is also telling you how he wants it to come

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Carlson - cross

1 out, right?

2 THE WITNESS: I understand that, yes.

3 THE COURT: Okay.

4 Go ahead, counsel.

5 BY MS. SCHARY:

6 Q. Ms. Carlson, you mentioned that you had testified before
7 that you had an affidavit from the plaintiff spelling her name.
8 Can I direct your attention -- you have your report in front of
9 you -- to Exhibit K-1 to your report? And that would be known
10 signature 1?

11 A. Yes.

12 Q. And I want to give you a second to review this. Let me
13 know when you have reviewed it and then I would like you to
14 read the second paragraph, please, of the affidavit of Erica
15 Almeciga.

16 A. The standard appearance release provided for Center for
17 Investigative Reporting and dating August 15th, 2012 is a fake.
18 I have never seen the release before and it does not contain my
19 signature. The printed handwriting at the top of said document
20 is not my own either.

21 Q. So, am I correct that the affidavit you are relying on is
22 actually a recitation of the plaintiff's claims in this case?

23 A. It appears to be.

24 MR. K. LANDAU: Objection. Relevance.

25 THE COURT: Sustained.

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Carlson - cross

1 BY MS. SCHARY:

2 Q. I'm going to direct your attention, before we were talking
3 about the ACEV method and you said that stands for analyze,
4 compare, evaluate and verify and you didn't verify anything in
5 this case; is that correct?

6 A. I did not, correct.

7 Q. Ms. Carlson, did you examine any of the print on the
8 release that you were given?

9 A. I did examine some of it, yes.

10 Q. Is that contained in your report?

11 A. You know? I would have to review that again. I'm not sure
12 if I actually referred to that specifically. I may have
13 referred to that generally in some of my paragraphs.

14 Q. I'm going to represent to you that it is not contained in
15 your report. Would that have been something important for you
16 to review in determining the plaintiff's natural handwriting?

17 A. Not necessarily, because I was asked to examine the
18 signatures, not the printing.

19 Q. And we were talking before when the Court was asking you
20 questions about somebody perhaps making their own signature
21 look a little different to make the signature look different.
22 You didn't take any steps in this case to assure yourself that
23 Ms. Almeciga did not disguise her signature in the five
24 signatures provided to you; isn't that right?

25 A. That I did not do anything? I always am aware of the

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Carlson - cross

1 potential for disguise when I am doing an examination so, yes,
2 I keep that in mind and I do take that into thought when I am
3 doing an examination because I know that is a possibility. But
4 specifically, to your question, I did not do anything, no. I
5 don't agree with that, because I do take that into context when
6 I do an examination.

7 Q. So, what did you do in this case to assure yourself that
8 Ms. Almeciga had not carefully drawn those five signatures to
9 make them look different?

10 A. Specifically I do my examination and that is just part --
11 it is just -- I almost feel like I would have to teach you two
12 years of what I learned to teach you how to do an examination.

13 It is part of the examination and what I do in
14 comparing the line quality and the signature quality and the
15 proportions and the ratios and the angles and all of those
16 things that I look at in an examination. That is just part of
17 it is determining whether that is disguised writing and are
18 potentially written by that same person.

19 Q. Hold on. You said that you compared the line quality and
20 all of these attributes that you mentioned -- you compared them
21 to what?

22 A. I am comparing them to one another as well as comparing
23 them to the questioned documents.

24 Q. So, if Ms. Almeciga created five signatures for you for
25 this case or for the previous expert for this case, they would,

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Carlson - cross

1 theoretically, look similar; isn't that right?

2 MR. K. LANDAU: Objection. Argumentative.

3 THE COURT: It is not argumentative. I'm not clear
4 where this is going yet but I don't think it is argumentative.
5 Overruled.

6 THE WITNESS: So, would you reask that, please?

7 BY MS. SCHARY:

8 Q. Sure.

9 You said that you looked at whether the signatures
10 that you have as purported knowns --

11 THE COURT: I think it was nine, if I am not mistaken.

12 MR. K. LANDAU: Correct.

13 Q. -- all of the signatures that you have as purported knowns,
14 whether they are similar to one another. My question to you is
15 what did you do to assure yourself that Ms. Almeciga did not
16 disguise all of them?

17 A. Because, like I said, when a person is writing their name,
18 even if they're attempting to disguise it or what is appearing
19 on the paper and what is appearing in my examination are the
20 subconscious traits and the subconscious characteristics that
21 even the author is not aware of. So, they couldn't possibly
22 change those things because they don't even know that they're
23 in existence. When I am doing my examination I find those
24 things and I see that they're in existence and so I'm comparing
25 those subconscious habits and those subconscious

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Carlson - cross

1 characteristics that the author wouldn't even know about.

2 THE COURT: But a little different point. I just want
3 to make sure I understood your previous testimony. The claim
4 that there are certain habits in writing your signature that
5 you -- the person -- signing are unaware of because they are
6 only in your subconscious as opposed to your conscious is a
7 psychological and/or neuroscientific theory well beyond your
8 expertise, yes? This is what you have been told by others and
9 you have accepted it as part of the basis for what you do but
10 it is not that you have ever conducted a psychological test or
11 it is not that you have immersed yourself in the
12 neuroscientific literature or anything like that.

13 THE WITNESS: Yes and no to your question.

14 No, I have not conducted a scientific or
15 neuroscientific test. Yes, I have experienced these things in
16 the many cases that I have done and in my studies and in my
17 experience and in doing cases that involve disguise or forgery
18 or all the different aspects of handwriting, I pick up on all
19 the little different things. So, it is not necessarily, no, I
20 didn't do the study to the neuroscientific aspect of it but I
21 have seen these things within my experience of doing this over
22 the last seven to eight years.

23 THE COURT: Well, what you mean by that is someone who
24 is trying to do a forgery slips or something like that and
25 makes mistakes even though they're trying to do a perfect

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Carlson - cross

1 forgery repeatedly?

2 THE WITNESS: Yes.

3 THE COURT: So how do you know they were a forgery?

4 THE WITNESS: Again, those minor idiosyncrasies, it
5 may be a hook at the beginning of a letter --

6 THE COURT: No, no. You see, it is without
7 independent knowledge that the person was a forger, it is a
8 circular argument.

9 THE WITNESS: Okay. I guess if you could clarify?

10 THE COURT: It may not be worth pursuing but the --
11 so, someone writes out the same signature 10 times.
12 Superficially they all look the same but when you blow them up
13 and look at certain things that you have been trained to look
14 at, you see that they're different.

15 THE WITNESS: Uh-huh.

16 THE COURT: That could be because no one can do the
17 exact same thing twice in a row so it could be accidental or it
18 could be because they were trying very hard to do a fake but
19 without realizing it they make mistakes. That's sort of your
20 hypothesis, or it could be that there were two or more people
21 making these signatures so they really weren't all coming from
22 the same person. There are many potential possibilities.

23 All I can say is that these signatures are not, when
24 you look closely, they're not really the same. But if I go
25 further and say they're a forgery, you have to have independent

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Carlson - cross

1 basis for knowing you have to have a known that you know is a
2 known, or you have to have someone confessing from the stand,
3 yes, you got me, I'm a forger, or something like that. But it
4 is not because the test itself shows that it was a forgery.
5 All it shows is that there were differences in what, to a
6 layman's eye, would appear identical, right?

7 MR. K. LANDAU: Your Honor, I'm sorry.

8 THE COURT: Do you want to object to that very short
9 question?

10 MR. K. LANDAU: Please? Yes. I apologize but, yes,
11 objection. It is a hypothetical and speculation.

12 I think that we have been going around the
13 generalities as opposed to kind of distilling down some of the
14 specifics as to what Ms. Carlson's examination actually
15 entailed and then maybe later on, after we go through the
16 specifics, if there are specific questions related to that,
17 that may be a little bit more productive.

18 THE COURT: Well, I think your objection has some
19 force in that we want to move things along. However, as I am
20 sure I don't have to remind counsel, in a Daubert hearing one
21 of the things the Court has to explore is methodology. But
22 maybe we can narrow it in this sense.

23 My understanding from the witness' testimony earlier
24 is she is not holding herself out as a scientific expert. She
25 is holding herself out as someone who has practical expertise

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Carlson - cross

1 in this area so that it would be -- her testimony might be
2 admissible under *Kumho Tire* but is not offered under Daubert.
3 But if you are offering her as a scientific expert, then I
4 think we have to get into all of these methodological issues.

5 MR. K. LANDAU: Your Honor, what we are offering her
6 for under Rule 702 as an expert witness --

7 THE COURT: I understand you want her as an expert. I
8 am asking what kind of expert.

9 MR. K. LANDAU: For the purposes of profession. She
10 does have the knowledge, skill, experience, and training that
11 allows her to make the conclusion she has made --

12 THE COURT: That may or may not be but that's still
13 not my question. This was prompted by her report.

14 In her report she repeatedly uses the time
15 "scientific." For example, on page 6 under the heading
16 Methodology she states, "The scientific methodology used in
17 this examination consists of the ACEV method which means
18 analyze, compare, evaluate and verify, the same method
19 reportedly used by the FBI, the U.S. Treasury Department, and
20 the U.S. Postal Service in their questioned document
21 laboratories." And the question I put to her earlier was are
22 we really talking science here? And, by the way, I have real
23 doubts as to how many scientists at all are employed at the
24 Treasury Department or the postal service. Or are we talking
25 about, if it still meets all the requirements would be

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Carlson - cross

1 admissible, are we talking about something that is largely the
2 product of experience? Experience not only of herself but
3 people who came before who passed on to her their experience of
4 what to look at and how to make distinctions, and I thought she
5 told me that it's the latter. And that's fine, but if you are
6 claiming she is utilizing scientific methodology -- which is
7 what her report purported to say -- then I can't escape getting
8 into all these methodological issues.

9 MR. K. LANDAU: Your Honor, to take the former point
10 first?

11 As far as the context of scientific methodology, I
12 think that there could be a variety of definitions as far as
13 that's concerned. There is qualitative methodology,
14 quantitative, political, social science.

15 THE COURT: Daubert says how to speculate about that
16 and political science would not make it under Daubert. Physics
17 would. But there is plenty of experts who are offered who are
18 not purporting to be scientific experts but just experiential
19 experts. If you have a lawsuit involving a leaky pipe you
20 might call an experienced plumber as your expert but he is not
21 going to say well, I apply Newton's third law and I undertook
22 and I discounted the effect of relativity or any of that stuff.
23 He is just going to say I have seen an awful lot of leaky
24 pipes.

25 MR. K. LANDAU: Of course. And to that --

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Carlson - cross

1 THE COURT: Really, I think what the witness told me
2 is --

3 MR. K. LANDAU: Yes.

4 THE COURT: -- she's in that category.

5 MR. K. LANDAU: Yes. And to that end, with respect to
6 the context of that terminology as far as scientific
7 methodology is concerned, I would suspect that that's the way
8 it was presented to her and they aren't lawyers. So, this is a
9 process that they adhere to and it may have been a connotation
10 as to what the people used in the field of forensic handwriting
11 speciality as opposed to the physics.

12 THE COURT: Not directed at this witness at all but
13 just as a general proposition, everyone likes to claim the
14 mantle of science. I assure you that every decision I make of
15 even the most trivial sort is based on an incredibly detailed
16 scientific application but unless you want to, for our
17 purposes, unless you want to claim that you are offering her as
18 a scientific expert -- if you are content to just offer her as
19 an expert based on experience and knowledge and training, all
20 the things that Rule 702 refer to, that's fine. Okay? In
21 agreement?

22 MR. K. LANDAU: Yes. Yes, your Honor.

23 THE COURT: Very good. Go ahead, counsel.

24 MS. SCHARY: Just a couple more questions.

25 BY MS. SCHARY:

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Carlson - cross

1 Q. Ms. Carlson, just to revisit something from earlier, you do
2 not have any basis to identify K-1 through K-50 as Erica
3 Almeciga's natural handwriting; isn't that correct?

4 MR. K. LANDAU: Objection. That's a
5 mischaracterization of her earlier testimony.

6 THE COURT: It is a question. I'm sure this witness
7 can answer it.

8 A. Anything to identify those signatures as her writing?
9 That's what you're asking me?

10 Q. Yes.

11 A. Specifically, no.

12 MS. SCHARY: Your Honor, I would like to reserve cross
13 as to the Georgia documents until after plaintiff enters that
14 testimony on direct because we don't know what it is going to
15 be since it is not in her report.

16 THE COURT: Okay.

17 MS. SCHARY: I would also like to --

18 THE COURT: Let's hear from plaintiff's counsel and
19 then we will come back to you.

20 MS. SCHARY: Can I move Exhibit 31 into evidence as
21 well?

22 THE COURT: I'm sorry. What was that?

23 MS. SCHARY: That was the e-mail.

24 THE COURT: I thought that has already been received.

25 MS. SCHARY: Thank you.

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Carlson - direct

1 THE COURT: But it is received again.

2 MS. SCHARY: Thank you, your Honor.

3 (Defendant's Exhibit 31 received in evidence)

4 DIRECT EXAMINATION

5 BY MR. K. LANDAU:

6 Q. Ms. Carlson, you indicated that you have been a Court
7 admitted expert since 2008 when you were still in school?

8 A. Yes.

9 Q. And without going through your extensive forensic
10 document --

11 THE COURT: And it is true you were only 13 at the
12 time?

13 MR. K. LANDAU: Charming.

14 Q. Without going through the 12 page testimony list in the
15 interest of time, I would like to just highlight a couple of
16 areas with respect to your experience.

17 Roughly how many courts across the country -- strike
18 that.

19 How many states across the country have you been
20 admitted in as an expert?

21 A. 15 states.

22 Q. And that includes both state and federal courts?

23 A. Not for each of the 15 states but, yes, I have testified in
24 local, state, and federal courts.

25 Q. And have they been on a variety of matters such as criminal

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Carlson - direct

1 as well as civil?

2 A. Yes.

3 Q. Have you trained government employees ever?

4 A. Yes. I actually did train government employees. I taught
5 the Denver Elections Division five times over the course of
6 four years a course that I co-authored in how to spot a forgery
7 so they knew how to look for suspicious signatures. We pull
8 those from the ballots for both the local and national
9 elections. I taught that course to the Colorado Clerk's
10 Association. I am scheduled to teach it again in Kansas and
11 here in a couple months.

12 Q. Kansas the state or Kansas, Colorado?

13 A. I beg your pardon. Kansas the state.

14 THE COURT: Is Kansas a state? From the Wizard of Oz
15 I thought it was a state of mind.

16 BY MR. K. LANDAU:

17 Q. When was the last time you taught a course in Denver?

18 A. I believe that was in -- you know, actually, I taught it to
19 the Denver Elections Division in 2014 was the last time I
20 taught it there. I believe I taught an introductory course of
21 that to the County clerk's association at the beginning of this
22 year if I am not mistaken.

23 Q. Okay.

24 Roughly how many cases have you testified in -- and
25 I'm not going to hold you to an exact figure, but a fair

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Carlson - direct

1 estimate as to how many cases throughout your career you have
2 testified in as a court-admitted expert?

3 A. It is 73. I counted those up.

4 MS. SCHARY: Your Honor, in the interest of time, we
5 are willing to stipulate to Ms. Carlson' bio which is included
6 in her expert report that she submitted.

7 THE COURT: Okay. I have actually read it as well, so
8 that's fine.

9 Let me ask a different question. I'm sorry, counsel.
10 I keep interrupting you.

11 So, if you hadn't had to get back to plaintiff's
12 counsel in such a tight time frame, would it have been useful
13 to you to have Ms. Almeciga, in your presence, sign her name?

14 THE WITNESS: It could have been. I rely,
15 generally -- okay, this is kind of a greater story.

16 I rely generally on what the attorney provides to me.
17 I don't generally rely on the story surrounding the documents
18 because I base my opinion on my examination of the evidence in
19 front of me. So, as far as her signing in front of me, it
20 could have been useful to see that, yes, she actually signs
21 this way, but as far as it just being is this the same author
22 as this? No, it wouldn't have been.

23 THE COURT: So, my vague recollection from years ago
24 when I was a prosecutor was that often when there was a
25 questioned document issue the expert would have the person

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Carlson - direct

1 whose handwriting was in question come in and, right there in
2 front of them, sign their name 10 times or something like that
3 and you could observe, first of all, if they were doing it
4 fluidly or a more slow, rigid way like you described before.

5 THE WITNESS: Right.

6 THE COURT: And then you would also have a known for
7 sure. It might have been altered because the person was trying
8 to, you know, make their signature different than they would
9 have done it but at least you had something to work for that
10 had all of those unconscious items that you mentioned.

11 So, that would have been useful, yes?

12 THE WITNESS: It could have been. Generally speaking
13 I prefer to have handwriting or signatures that were done prior
14 to the matter at hand just for the fact that they didn't know
15 their signature was going to be examined so they wouldn't have
16 had any reason to attempt to disguise it.

17 THE COURT: Right. But in this case we don't have
18 that other than the ones that -- you don't know whether they're
19 really hers or not. All that you know is that is
20 representation that was made.

21 THE WITNESS: Correct.

22 THE COURT: So, do you think if, for example, now if
23 they were asked to do it there would be a risk that she would
24 not be doing it naturally? Is that what you are saying?

25 THE WITNESS: Yes. Essentially, yes. Because of the

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1 situation is unusual, she may or may not attempt to change her
2 writing, and so with that I prefer to have something written
3 before -- before knowledge of this.

4 THE COURT: Why don't we see.

5 Ms. Almeciga, do you want to take a seat over there
6 where the jury is? And I will ask my law clerk to give you a
7 pen and pad.

8 PLAINTIFF: Would you like me to write on top of here?

9 THE COURT: I want you to sign your name, in your
10 normal way, 10 times.

11 MR. K. LANDAU: Should I be asking questions?

12 THE COURT: I will let her finish this and then you
13 can ask.

14 MR. BURKE: Your Honor, while that is happening, as a
15 housekeeping matter, is Mr. Livesey excused?

16 THE COURT: Mr. ?

17 MR. BURKE: Livesey excused?

18 THE COURT: Yes.

19 MR. BURKE: Thank you.

20 THE COURT: Thank you so much. My law clerk will take
21 it. You can go back to counsel table. Let me just see it.

22 Okay. So, what I will do is I will have my law clerk
23 make copies of this for me and counsel and we will mark it as
24 Court Exhibit 1 and I will, as soon as we have made copies, I
25 will give the original to Ms. Carlson and we will let you know

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Carlson - direct

1 after I have discussed it with counsel what, if anything, we
2 would like you to do with respect to this.

3 Go ahead, counsel.

4 MR. K. LANDAU: Thank you.

5 Your Honor, for the record, plaintiff would just like
6 to admit Ms. Carlson's curriculum vitae and testimony list as
7 Exhibit A.

8 MS. SCHARY: Objection, your Honor. Are those part of
9 the Rule 26 report?

10 MR. K. LANDAU: Yes.

11 MS. SCHARY: If they're part of Rule 26 report they're
12 already in and we're okay with that.

13 THE COURT: The whole report will be received, not
14 necessarily for its truth, but for the fact that it was her
15 report.

16 MS. SCHARY: Thank you, your Honor.

17 MR. K. LANDAU: Yes, and that's included.

18 THE COURT: Right. We will call that Plaintiff's
19 Exhibit A.

20 (Plaintiff's Exhibit A received in evidence)

21 BY MR. K. LANDAU:

22 Q. Ms. Carlson, before we get to the specific analysis that
23 you had conducted, for a point of clarification you advised
24 that among the original signatures that you had received was an
25 affidavit. Isn't it that true that that affidavit was

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Carlson - direct

1 accompanied by a notary, that it was a notarized signature?

2 A. Yes.

3 Q. And a notarized signature of course means what?

4 A. Generally, a notarized signature is supposed to verify the
5 authenticity of that signature.

6 Q. Great.

7 A. That's generally what that means.

8 Q. And this was also included in your report, the affidavit of
9 Erica Almeciga?

10 A. Yes. That is the first page that I included because it
11 contained the signature.

12 Q. Okay. And as far as the information that you had, though,
13 the notary was also attached to the document you reviewed?

14 A. Yes.

15 Q. Okay.

16 In addition to that document, have you received other
17 notarized signatures from Ms. Almeciga?

18 A. From her specifically? I don't believe it was from her
19 specifically. It was through you I did receive another
20 affidavit with a notarized signature on it.

21 Q. Okay.

22 And this, of course, was the same affidavit that was
23 attached to plaintiff's response?

24 THE COURT: Yes.

25 MR. K. LANDAU: We can mark that Exhibit B and C,

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1 respectively?

2 THE COURT: Just now my law clerk has made copies.
3 Let me give you the original of Court Exhibit 1.

4 BY MR. K. LANDAU:

5 Q. Ms. Carlson, now moving on to the specifics of the
6 signatures that are of course at issue in this case. You have
7 prepared a supplemental chart, if you were to help explain in a
8 more efficient fashion the distinctions?

9 A. Yes.

10 MS. SCHARY: Objection your Honor.

11 We have never seen this chart before today. It was
12 not part of the plaintiff's Rule 26 disclosures and if she is
13 going to testify about her analysis, we think it would be
14 appropriate for her to do so in person.

15 MR. K. LANDAU: Well she's here, so.

16 MS. SCHARY: We object to the admission into evidence
17 of a chart prepared out of court by the expert that was not
18 submitted as part of her Rule 26 report.

19 MR. K. LANDAU: Your Honor, I believe earlier you
20 indicated that for the purposes of this hearing you will allow
21 it as far as any challenges at the trial --

22 THE COURT: I think there is a distinction between
23 what's admissible at trial which will be limited, quite
24 strictly, to what is in her expert report and I will not
25 accept, under the circumstances of this case, any amendment to

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Carlson - direct

1 that report other than on express prior permission of the Court
2 for good cause shown, if there is. But, for purposes of a
3 Daubert hearing -- which most people call a Daubert hearing but
4 actually Mr. Daubert pronounced it Daubert and he should
5 know -- I think the Court is well within its bounds to accept
6 anything that it thinks will help it to evaluate the
7 admissibility of the testimony. In fact, the Federal Rules of
8 Evidence, as I am sure counsel knows, say that they do not
9 apply to admissibility.

10 Now, having said all of that, the real complaint that
11 defense counsel has is they're being sandbagged by stuff that
12 they weren't shown. And since plaintiff's counsel must have
13 known about this, why didn't you provide it to your adversary?

14 MR. K. LANDAU: Your Honor, we had received this chart
15 yesterday in the evening. It is primarily for demonstrative
16 purposes.

17 THE COURT: And what about the Georgia stuff, the
18 report of Ms. Carlson on the Georgia stuff?

19 MR. K. LANDAU: It is just a chart that --

20 THE COURT: No, no. I'm not talking about the chart
21 right now.

22 Did you also do --

23 MR. K. LANDAU: No --

24 THE COURT: So she only did an oral report on her
25 results of the Georgia stuff?

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Carlson - direct

1 MR. K. LANDAU: With the chart for --

2 THE COURT: I see.

3 MR. K. LANDAU: -- illustrative purposes.

4 THE COURT: Was any of that reported to you orally
5 before you received that chart yesterday?

6 MR. K. LANDAU: No.

7 THE COURT: Ah.

8 When did you request her to do this?

9 MR. K. LANDAU: It is an ongoing conversation but it
10 wasn't a comprehensive conversation until we were able to go
11 through it because I'm obviously --

12 THE COURT: Well, give me a hint. When did that
13 comprehensive conversation begin?

14 MR. K. LANDAU: Probably last week is when she was
15 supplied with the signatures.

16 THE COURT: Here is what I think makes sense. I will
17 allow you to put this into evidence assuming it otherwise
18 complies with the rules for today's purposes but only if, and I
19 want Ms. Carlson's agreement on this since she's the victim in
20 some ways, that only if she makes herself available for a
21 deposition on these new matters sometime within the next week,
22 so that before I rule on the admissibility of her testimony I
23 can have whatever further information from her deposition that
24 defense counsel wants to bring to my attention.

25 MR. K. LANDAU: Your Honor, it should be noted that

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Carlson - direct

1 throughout this litigation defense counsel has not had an
2 expert of their own.

3 THE COURT: That's true.

4 MS. SCHARY: Objection.

5 THE COURT: And so that puts you in a good -- in a
6 strategically better position than you might otherwise be. So,
7 it is not a matter of a battle of the experts, it is a matter
8 of the admissibility of her testimony. That's what a Daubert
9 hearing is all about. And it also bears, again to your
10 benefit, on their sanctions motion because their sanctions
11 motion, in rather sometimes frankly inflammatory language,
12 accuses you and your client of falsification and forgery and
13 other things like that but you have, if her testimony is
14 admissible, at least an expert who is, in certain respects,
15 supportive of your position, which is why we are having the
16 hearing today.

17 So, I want to give you every benefit of even stuff
18 that she's come to do later as a result of that but not unless
19 your adversary gets a chance to put her to a deposition so
20 they're not just having, today, to come up with questions for
21 her. Okay?

22 MR. K. LANDAU: Sure.

23 THE COURT: So now, does that work for you? Are you
24 available for a deposition in the next week?

25 THE WITNESS: I'm available Wednesday, Thursday, and

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Carlson - direct

1 Friday. I have a trial on the first two days of the week.

2 THE COURT: So, Thursday and Friday?

3 MS. SCHARY: Your Honor, I don't have my calendar in
4 front of me. I know I have another deposition on Thursday.

5 THE COURT: I will tell you what. I will say that the
6 deposition has to occur before Christmas.

7 MS. SCHARY: Okay, your Honor.

8 THE COURT: And you will work out mutually --

9 MR. BURKE: But, your Honor, where will the deposition
10 take place?

11 MS. SCHARY: In New York.

12 THE COURT: Well, if you want to pay for her expenses
13 it should be in New York. If you want to go out to Denver -- I
14 encourage you to go to Denver at Christmas, it is really -- the
15 state is fantastic.

16 MR. BURKE: Your Honor, I grew up in Nebraska. I
17 never enjoy being in Denver at Christmas.

18 THE COURT: What can I say? There is each to his own,
19 but.

20 Do you want to do it tomorrow?

21 THE WITNESS: Or we can do it in Texas, that's where
22 my other office is.

23 THE COURT: You can do it in Texas. I don't know that
24 that has any great appeal to anyone.

25 How long are you here?

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Carlson - direct

1 THE WITNESS: Just today.

2 THE COURT: Pardon?

3 THE WITNESS: Just today.

4 THE COURT: Are you staying over tonight?

5 THE WITNESS: No.

6 THE COURT: Do you want to do it by telephone?

7 MS. SCHARY: I would prefer not to do it by telephone.

8 THE COURT: How long do you want for the deposition?

9 MS. SCHARY: I guess it depends on the length of the
10 testimony here. The last one was done within a couple hours so
11 I assume it would be a half day deposition.

12 Just for the record, I would like to clarify in terms
13 of our objection, I think the record is clear that Mr. Landau
14 had these Georgia documents before he even hired Ms. Carlson
15 and so we particularly object not only to this being raised
16 now, she could have had them in time to -- he had them in hand
17 before he gave her any documents and so he decided to give her
18 them after and now we are going to pay more money to do a
19 second deposition.

20 THE COURT: All of that is true but the ultimate --
21 these kinds of situations come up all the time.

22 The Court is guided, first and foremost, by the need
23 to determine what the truth is and if there is additional
24 information that will assist the Court at arriving at the
25 truth, I'm not going to allow the adversarial process to stand

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Carlson - direct

1 in the way. Part of arriving at the truth, however, is giving
2 you a full and fair opportunity to question her about these new
3 materials which you clearly can't do today when this is just
4 being sprung on you.

5 So, that's why we have the deposition so that we are
6 down, I think, to the very narrow question of who should pay
7 travel expenses for that deposition and whether it is her
8 travel expenses to New York or your travel expenses to Denver.
9 It sounds to me that this can be done in one day so there will
10 be no hotel expenses so it would just be flying there or her
11 flying here and flying back, which you did today as well, yes?

12 THE WITNESS: Yes.

13 MS. SCHARY: And she has done previously, yes.

14 THE COURT: So that could be done except on certain
15 airlines that are notoriously late but those are the airlines
16 that I travel on so I will warn you in advance.

17 So, I think probably if you want this admitted, I
18 think you need to pay the cost of one attorney's economy fare
19 travel to Denver and back on a date that they work out with
20 Ms. Carlson. If they want to take more than one attorney,
21 that's at their expense. And if, of course, any report has to
22 be made at their expense because it would be made at their
23 expense regardless but I think that is the fair resolution.

24 MS. SCHARY: Your Honor, we would prefer to do it in
25 New York, so rather than paying my fare out there.

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Carlson - direct

1 THE COURT: How much did it cost you to come out here?

2 THE WITNESS: I don't know. I didn't by ticket.

3 THE COURT: They bought the ticket?

4 THE WITNESS: Yes.

5 THE COURT: How much did it cost?

6 MR. K. LANDAU: \$300 or \$400.

7 THE COURT: Pardon?

8 MR. K. LANDAU: \$300 or \$400.

9 THE COURT: So, it is a burden, but if you want this
10 evidence in that's the burden you are going to have, that's the
11 price.

12 Okay. Go ahead.

13 MR. K. LANDAU: Thank you, your Honor.

14 Your Honor, marking as Exhibit D -- Plaintiff's
15 Exhibit D, pardon me, is the chart referenced earlier that you
16 do not have a copy of.

17 MS. SCHARY: Yes.

18 MR. K. LANDAU: Titled Differences Between the Erica
19 Almeciga Signatures. Does the Court have a copy?

20 THE COURT: No.

21 MR. K. LANDAU: As well as we can say E for
22 verification purposes, Plaintiff's Exhibit E, which is the
23 color-coded nature of Ms. Carlson's way of reflecting the
24 analysis.

25 THE COURT: Okay.

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Carlson - direct

1 MS. SCHARY: With the same objection, your Honor.

2 THE COURT: Well, he hasn't offered them yet, he has
3 just marked them.

4 MR. K. LANDAU: I just marked them.

5 THE COURT: So, go ahead. Put questions and we will
6 see if they're admissible.

7 MR. K. LANDAU: Thank you, your Honor.

8 BY MR. K. LANDAU:

9 Q. Ms. Carlson, did you prepare both the chart labeled
10 Differences Between the Erica Almeciga Signatures as well as a
11 document that lists Q1, K1, K2, K3, K4, K5 that appears to be
12 two pages with a variety of color coding?

13 A. Yes.

14 Q. Did you prepare both of these?

15 A. Yes, I did.

16 Q. Thank you.

17 Can you take us through, in whatever order you prefer,
18 your analysis?

19 A. Yes.

20 First of all, to explain this document with all the
21 color on it, that is a copy of what I do in my examinations.
22 It is kind of a rendering of my work sheet as I go through the
23 examination to make my findings. The chart that I created,
24 part of it is already in the list in my report as far as the
25 differences between the question and purported known

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Carlson - direct

1 signatures. This chart goes a little further in that I have
2 now included the signatures on the described Georgia documents
3 and --

4 Q. So, why don't we take them one at a time then. Based on
5 your analysis, is it easier to just take the signatures and
6 explain the characteristics?

7 A. Yes, I can do that. Really, these work sheets I have
8 provided to just show the Court both -- both -- I keep saying
9 both -- the questioned signature as well as the purported known
10 and now as well as the Georgia signatures, and so that way, as
11 we are going through this list of differences, whoever is
12 reading it can look at these colored documents and find those
13 specific items within each of those signatures as we go along.

14 THE COURT: So, just to narrow this again because I am
15 concerned about the time, we have other witnesses to get to, I
16 take it that -- no, I'm not sure -- withdrawn.

17 Go ahead. Never mind. Go ahead. Just bear in mind
18 that we are already at 3:30.

19 BY MR. K. LANDAU:

20 Q. So, hopefully we can --

21 A. That's fine, that's fine. And again, some of these are in
22 my report so I can go through those quickly.

23 First of all, the thing I have listed is the speed of
24 writing, and you can see in the questioned signature at the top
25 of one page it says Q1, very quick fluid writing, and the known

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Carlson - direct

1 signatures are the purported known which are lined below as
2 slower methodical writing. And the Georgia signatures which
3 are on the second page, that again is very quick, fluid
4 writing. The spelling in the name is obviously different. We
5 don't even need to go through that just because you can see it
6 on the pages.

7 In the bottom of the known signatures you can see K5,
8 there are spellings of both with an I and with a Y, and my
9 understanding was that Ms. Almeciga wrote those out just to
10 show how she would write that name if she were to spell it that
11 way.

12 The next thing I wrote is the angle from the top of
13 the E in Erica to the top of the A in Almeciga, this is one of
14 the angles that I was talking about. You can see in the
15 questioned signature it didn't really show up so much on these
16 copies because it was cut off. In the questioned signature the
17 A is taller than the first initial E. In the known signatures
18 the A is always shorter than the initial E and you can see that
19 with that blue line, again like I said, with that angle from
20 the E to the A it is almost like fence posts because you can
21 see those blue lines out to the left margin showing that angle.
22 In the Georgia signatures those are variable angles. Some of
23 them are very horizontal, sometimes the A is taller, sometimes
24 the E is taller. So, there is not consistent pattern with
25 those signatures.

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Carlson - direct

1 The middle bar of the E is longer in both the
2 questioned and the Georgia signatures than the lower bar, and
3 Erica Almeciga's purported known or I am going to say the known
4 signatures, they're the case signatures, the middle bar is
5 actually shorter than the bottom. And you can see that with a
6 red marking from the middle bar to the bottom bar on her first
7 initial, it is a red pen that I used to mark that angle.

8 The I dot in Erica, there is no I in the questioned
9 signature in the name Erica. In the known signatures it is
10 either a small arc or maybe a V or X-type formation above the I
11 in her first name. In the Georgia signatures the I dot is
12 actually a long, horizontal-style slash for the I dot.

13 THE COURT: So, let me show you -- do you have another
14 copy of that -- I have also furnished, counsel, Court Exhibit
15 1. You have the original in front of you, correct?

16 THE WITNESS: Yes.

17 THE COURT: So, we know that these were Ms. Almeciga's
18 signatures because we all observed her signing it. By the way,
19 when she signed it, was -- to your observation was that
20 consistent with quick fluid writing or slow methodical writing?

21 THE WITNESS: No, I would say she was a very slow,
22 methodical writer.

23 THE COURT: Okay.

24 Now, if you look at the loop in the G, the next to
25 last letter of her name and in the 10 samples we have of her

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Carlson - direct

1 signature made here today, the loop is quite different in many
2 of these signatures, yes?

3 THE WITNESS: Yes.

4 THE COURT: So if you hadn't observed her doing that
5 why would you have concluded that these were actually
6 signatures of different people?

7 THE WITNESS: Because, as I'm looking through them
8 right now without doing a full examination, I can see that the
9 distortions tend to be repetitive in some of these. She tends
10 to have what I would call dents within those loops and a lot of
11 them appear in a very similar area. Also, she has got a very
12 pointed tip on the bottom of some of those loops and, in
13 addition to that, I'm also looking at the entire letter, not
14 just necessarily the bottom loop, so I am looking at where she
15 begins the top loop, how it's -- where it begins the creation
16 from the I to the G and it appears that those letters,
17 generally speaking, start about the 12:00 or 1:00 area of her
18 loop. And so, as I am doing my examination I am not basing my
19 opinion on one specific feature, it's really a culmination of
20 all my findings.

21 THE COURT: Okay.

22 Go ahead, counsel.

23 BY MR. K. LANDAU:

24 Q. Thank you.

25 A. Okay. The next thing that I wrote was the Y in the first

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Carlson - direct

1 name. Yes, there is a Y in the questioned signature, no, there
2 are no Ys in the Georgia signatures and, again, in the known
3 signatures, two out of the nine, which I guess this bottom one
4 got cut off again from the copy, but two of the nine signatures
5 contained a Y and, again, my understanding was she did that
6 intentionally to show how she would write it. The C overlaps
7 the right side of the Y in the questioned signature. It does
8 not, in the known signatures even when she wrote the Ys there
9 is a good space between the Y and the C and there is no Y in
10 the Georgia signatures.

11 The ending of the name, the A in Erica curves up at
12 the end in the known signatures and the Georgia signatures but
13 not in the questioned signature.

14 So, this chart is really showing, yes, there are
15 similarities between some of these but not between the majority
16 of these and so there really is showing the multitude of
17 differences in all of these signatures.

18 The next thing I was examining was the beginning of
19 the A in Almeciga --

20 THE COURT: I'm sorry. Forgive me.

21 THE WITNESS: Yes.

22 THE COURT: In your chart, under Erica Almeciga's six
23 signatures, those are the entirety of the ones that were
24 represented to you by counsel to be her known signature?

25 THE WITNESS: Yes.

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Carlson - direct

1 THE COURT: So that would include -- are we talking
2 about the nine plus the affidavits or the affidavit is part of
3 the nine?

4 THE WITNESS: One of the affidavits is part of the
5 nine, the second affidavit is not.

6 THE COURT: So, I notice that in your chart you note
7 that the Y in the first name is included in two of the nine
8 signatures so, assuming these were her known signatures it is
9 clear that she sometimes spells her name with a Y, yes?

10 THE WITNESS: I'm not sure that she sometimes spells
11 it that way or she just did it as a request to spell it like
12 that person's spells it so we can see. I don't know how that
13 was created. But, even in that I see enough differences
14 that --

15 THE COURT: Well, wouldn't it have been important for
16 you to know which of those two possibilities it was?

17 THE WITNESS: Yes, it would be, and again I believe
18 part of it was the short time frame that I just --

19 THE COURT: But before you prepared this chart you had
20 more follow-up time, yes?

21 THE WITNESS: Yes.

22 THE COURT: But you didn't ask that.

23 THE WITNESS: I asked and he did tell me that those
24 were -- oh, as far as if she spells her name that way? My
25 understanding is that she does not spell her name that way. My

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Carlson - direct

1 understanding was she did this to show how she would do it if
2 she wrote it that way.

3 THE COURT: I see.

4 THE WITNESS: That's what my understanding is.

5 THE COURT: Okay.

6 Go ahead.

7 THE WITNESS: The beginning of the A, the capital
8 letter A begins beneath the ending stroke of the A in Erica on
9 the questioned signature and it also begins either under
10 underneath or very close to that ending stroke of the A in
11 Erica on the Georgia signatures, but because the A is written
12 completely differently in like an oversized lower case A it
13 doesn't come -- it doesn't begin underneath the ending of the
14 first name.

15 Another one of the angles is from the A to the L in
16 Almeciga. In the questioned signature the A is taller than the
17 L. In the known signatures the A is shorter than the L except
18 for -- oh, I beg your pardon, I am reading that improperly.
19 The A is shorter than the L in the known signatures. And then,
20 in the Georgia signatures, the A again is taller than the L.

21 The formation of the letter A is different in all of
22 these signatures. The questioned signature on the release has
23 a pointed and retraced top in the capital letter A in Almeciga.
24 The capital letter A in the known signatures, again is written
25 as an oversized lower case letter so it is rounded, there is no

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Carlson - direct

1 point on top. In the Georgia signatures some of those letter
2 As are retraced at the top, some of them have loops. And if
3 you look at that top signature on those Georgia signatures, the
4 top loop is actually almost half the height of that letter A,
5 so, that's a very large, large loop in that signature and
6 that's not seen in any of the other signatures on the other
7 page. The lower right portion of the letter was also very
8 notable to me. Again, in the known signatures there is not
9 necessarily a lower right because it is a circular formation.

10 THE COURT: Well, in the interest -- I see all of this
11 in the chart so in the interest of time, are you offering, now,
12 Exhibit D?

13 MR. K. LANDAU: Yes, your Honor.

14 THE COURT: Any objection?

15 MS. SCHARY: We have the same objection raised prior.

16 THE COURT: Which is?

17 MS. SCHARY: That we haven't had a chance -- that we
18 haven't seen it.

19 THE COURT: It will be received without prejudice. If
20 there is something that comes out at the deposition that would
21 lead to inadmissibility as opposed to simply questioning of the
22 results but simply admissibility of the exhibit I will consider
23 it, but subject to that contingency, it is received.

24 (Plaintiff's Exhibit D received in evidence)

25 THE COURT: E was just a short sheet, yes?

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Carlson - direct

1 THE WITNESS: Yes.

2 THE COURT: E will be also be received.

3 (Plaintiff's Exhibit E received in evidence)

4 THE COURT: Anything else?

5 MR. K. LANDAU: Your Honor, just a couple quick
6 questions.

7 BY MR. K. LANDAU:

8 Q. Ms. Carlson, is your professional reputation important to
9 you?

10 A. Yes.

11 Q. Just because an attorney professes what side of a case they
12 may be on, is that going to sway your testimony one way or the
13 other?

14 A. No. No. I have actually have had to call clients and let
15 them know I don't agree with you, my opinion is different, and
16 that's the end of that as far as my retention.

17 No. And I believe I have testified to this before, I
18 don't necessarily believe the stories that are told me. Again,
19 I rely on the evidence in front of me to form my opinion.

20 THE COURT: Would it be a better practice by attorneys
21 not to indicate in advance how they want you to come out?

22 THE WITNESS: You know, some attorneys are shocked
23 when I let them know so they don't even know their client is
24 lying to them as well so it's --

25 THE COURT: Go ahead, counsel. This was a rhetorical

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Carlson - direct

1 question on my part. Your objection is noted.

2 BY MR. K. LANDAU:

3 Q. If you did not believe you would be able to form a
4 professional opinion within 48 hours of receiving the
5 information, would you have so advised?

6 A. Yes. Absolutely. Yes, I would have told you that I needed
7 more information or more documents.

8 Q. I believe that this was already addressed but this was an
9 e-mail that was provided that had included another document
10 expert's report, correct?

11 A. Yes.

12 Q. To your knowledge, the other document examiner's report had
13 come to the same or similar conclusion?

14 A. You know, I don't even recall that I ever read his report.
15 I don't have it in my file and I don't know that I ever printed
16 it out so I don't know, to be honest. I really don't know.

17 Q. Okay.

18 So, any e-mails received by counsel could have just
19 been a recitation of another document examiner's professional
20 opinion as well?

21 MS. SCHARY: Objection. Leading and hypothetical.

22 THE COURT: Sustained.

23 MR. K. LANDAU: No further questions.

24 THE COURT: All right. Anything further from defense?

25 No.

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Almeciga - cross

1 Thank you so much. I think you should step down.

2 (Witness excused)

3 THE COURT: I think we should now call Ms. Almeciga
4 because we are running out of time and we need to have her
5 testimony. We will talk about what we will do with respect to
6 the other witnesses. So, Ms. Almeciga, come on up.

7 My courtroom deputy will appear as if magic and swear
8 you in.

9 ERICA ALMECIGA,

10 called as a witness by the Plaintiff,

11 having been duly sworn, testified as follows:

12 THE COURT: I think it makes more sense to have
13 defense counsel question her first and then plaintiff's counsel
14 second given the shortness of time. So, go ahead.

15 CROSS EXAMINATION

16 BY MR. BURKE:

17 Q. Is it correct in your interview with Mr. Livesey and
18 Mr. Hooper -- you did have an interview with them, did you not?

19 A. Yes, I did.

20 Q. And where was that interview?

21 A. Woodville, Texas.

22 THE COURT: Do you want to get closer to the
23 microphone, please?

24 Q. You told them that you were, "just an everyday normal
25 person who was not scared of being associated with Mr. Reta and

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Almeciga - cross

1 his then Zetas connection," didn't you?

2 A. I do not recall saying that.

3 Q. You told CIR that you don't think it would be even worth
4 Zetas' time to come and hurt you. Isn't that right?

5 MR. K. LANDAU: Objection.

6 THE COURT: I think this is not --

7 MR. BURKE: Your Honor, it goes to the state of mind
8 as of the day she signed the release. Whether she was scared
9 or not is highly relevant to the Court's analysis.

10 MR. K. LANDAU: But there is no foundation that's been
11 offered.

12 THE COURT: No, no. This is in their papers.

13 MR. BURKE: Your Honor, I can refer the Court to --

14 THE COURT: You don't have to because I have already
15 read it.

16 Well, all right, on the representation of the
17 relevance I will allow a brief questioning but I do want to
18 keep it focused on the release. But, I agree with you that her
19 state of mind is relevant.

20 MR. BURKE: Your Honor, I have one bit of video, it
21 is -- the transcript of this is from Exhibit 4, page 9. I
22 would like to show that for the witness and for the Court. It
23 will appear on the screen.

24 THE COURT: How long is it?

25 MS. SCHARY: 30 seconds.

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Almeciga - cross

1 MR. BURKE: Less than 30 seconds.

2 THE COURT: All right. Go ahead.

3 (video file played)

4 BY MR. BURKE:

5 Q. You don't deny that you told Mr. Livesey and Mr. Hooper
6 what you just heard?

7 A. No.

8 Q. That refreshes your recollection?

9 A. Yes.

10 THE COURT: By the way, two things. First of all, are
11 you in fact married to Mr. Reta?

12 THE WITNESS: No. In the Spanish culture sometimes
13 when you're dating somebody or talking to somebody, that's --
14 they refer to you as their wife. It's just a cultural thing.

15 THE COURT: Okay.

16 And is it your testimony that you never signed any
17 release or that you may have signed a release but not the one
18 that has been offered by the defense?

19 THE WITNESS: Nothing was ever signed.

20 THE COURT: You never signed a release?

21 THE WITNESS: No.

22 THE COURT: Okay. Go ahead, counsel.

23 BY MR. BURKE:

24 Q. After your interview was first published do you know what
25 year that was?

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Almeciga - cross

1 A. I believe it was 2012.

2 Q. I will represent to you that it was on July 16th, 2013.

3 A. Okay.

4 Q. Does that sound right?

5 MR. K. LANDAU: No.

6 THE WITNESS: No.

7 THE COURT: You're talking about --

8 THE WITNESS: I'm sorry.

9 THE COURT: I think the witness may be unclear. You
10 are talking about when it was shown as opposed to?

11 MR. BURKE: When it was first broadcast by CIR.

12 THE COURT: It was filmed in 2012, yes.

13 MR. BURKE: Filmed in August 2012.

14 THE COURT: And shown in 2013?

15 MR. BURKE: Correct; in July 2013.

16 THE COURT: By the way, because we are not before a
17 jury in a trial, because I'm allowing it for today, but if we
18 were before a jury if anyone start a question and says: "I
19 represent to you X, Y, or Z," at that point I will have no
20 choice but to impose a minimum of a \$10,000 fine on that
21 counsel for putting their credibility in issue. But, today I
22 will allow it.

23 MR. BURKE: Your Honor, I was trying to speed the
24 process along.

25 THE COURT: Very good.

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Almeciga - cross

1 MR. BURKE: More than not.

2 BY MR. BURKE:

3 Q. After the interview was first published in 2013, the father
4 of your three children began to use the association -- your
5 association with Mr. Reta against you; isn't that correct?

6 A. No.

7 MR. K. LANDAU: Objection. Relevance.

8 THE COURT: Overruled.

9 Q. Never happened?

10 A. No.

11 Q. Has your association with Mr. Reta had any effect on
12 custody proceedings involving any children whether it's your
13 children, or the children of your fiancée, Mr. Duarte?

14 A. My children, he is their father, put it in answer to a
15 response that I had put in to a motion that I put into the
16 courts. In his answer he put in that I was affiliated with the
17 cartel.

18 Q. Did that have an adverse effect on you?

19 A. Yes, it did.

20 Q. And, for your fiancée, Isaac Duarte, that representation is
21 also being used against you in custody proceedings regarding
22 his children, correct?

23 A. No. It was, but it is not anymore.

24 Q. But it has happened before, correct?

25 A. Yes, it has.

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Almeciga - cross

1 Q. So, it is your testimony today that you did not sign any
2 release, no release was shown to you by Mr. Livesey or
3 Mr. Hooper in Woodville, Texas?

4 MR. K. LANDAU: Objection. Compound question.

5 THE COURT: Sustained as to form. Just break it down.

6 BY MR. BURKE:

7 Q. Did you sign any release at any time that you were in
8 Woodville, Texas?

9 A. No.

10 Q. You have used different spellings of your first name Erica,
11 correct?

12 A. I have.

13 Q. And you have used different -- have you used the last name
14 Reta before in your signature?

15 A. Not -- not my written signature, no.

16 Q. Never in writing?

17 A. No. The only time I have ever done that is when I was
18 asked to supply handwriting samples.

19 Q. Your Honor, I am referring to Ms. Almeciga's September
20 24th, 2015 deposition testimony at 103, line 16, 104:4:

21 "Q At some point did you start using Reta as your last name?

22 "A He had me do that because to write to the person you had to
23 be a family member or something, so he just had me put this on
24 the outside of the envelope. And he would -- I can't speak for
25 Rosalio, but when he would write back to them he would tell

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Almeciga - cross

1 them different. If you are close to somebody you are, like,
2 considered your wife. Like, if you asked, say Pablo, if I met
3 a Pablo from a few years ago, Pablo would say, yes, that's my
4 ex-wife. We were never married, never a possibility, just
5 giving you an example."

6 Do you remember that testimony?

7 A. I don't recall it, but.

8 THE COURT: Well, is it correct that when you wrote to
9 Mr. Reta in prison you would use the name Reta on the envelope
10 or on some --

11 THE WITNESS: I would say there was a couple of times
12 where he would have me send him a letter from somebody else and
13 I would use that, put that last name on this.

14 THE COURT: Okay.

15 MR. BURKE: Your Honor, I believe Ms. Almeciga's
16 testimony even today was that her written signature she did not
17 include the last name of Reta.

18 THE COURT: Well, that's what I'm trying to get at,
19 whether in the sense this is involving the prison she had a
20 written signature using that name or not and I'm still not
21 totally clear on that. So, maybe you can clarify that for me.

22 THE WITNESS: What exactly --

23 THE COURT: So we know that orally you sometimes use
24 the name Reta, yes?

25 THE WITNESS: It has been a couple years.

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Almeciga - cross

1 THE COURT: Okay.

2 The question that counsel wanted to know was other
3 than in the handwriting samples, did you ever sign your name or
4 use the name in writing "Reta," as in --

5 THE WITNESS: As a return last name, yes, but my last
6 name was always hyphenated.

7 THE COURT: Okay.

8 BY MR. BURKE:

9 Q. If you weren't married to Mr. Reta, why did you tell CIR
10 that you were?

11 A. In Spanish culture that's how I was referred to by his
12 family, his friends: As his wife.

13 Q. Did you offer that explanation to CIR?

14 A. I wasn't asked.

15 Q. So you held yourself out as his wife?

16 MR. K. LANDAU: Objection. Asked and answered.

17 THE COURT: Well, I think I know both sides' positions
18 on that issue so we can move on.

19 BY MR. BURKE:

20 Q. You talked about correspondence that you had with Mr. Reta.
21 How often did he write to you?

22 A. Quite a bit.

23 Q. How many letters would you estimate he sent you, in total?

24 A. Over the years? Probably close to -- a few hundred maybe,
25 close to a thousand. In between somewhere.

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Almeciga - cross

1 Q. So, what time period would that cover? How many years?

2 A. Five. Five or six.

3 Q. Okay. So you would estimate a thousand letters?

4 A. That would be -- I think that's forcing it a little bit. I
5 would say under a thousand but it was quite a bit.

6 Q. But when you were deposed you testified under oath that you
7 only received two or three letters a month from Mr. Reta. Is
8 that right?

9 A. Correct.

10 Q. So that jives with your calculation?

11 A. Well, there was cards, drawings. As far as letters when
12 you asked me for a specific I gave you a specific answer.

13 Q. So was it truthful when you told CIR that you received
14 1,300 letters from Mr. Reta?

15 MR. K. LANDAU: Objection. Can we stipulate that
16 there was a lot of letters as opposed to trying to jog her
17 memory? In the interest of time?

18 THE COURT: Well, come to side bar for a minute.

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Almeciga - cross

1 (At side bar)

2 THE COURT: So, depending on the answers I may seal
3 this side bar, but from the witness' manner of speaking and her
4 affect, which may just be her manner of speaking and affect,
5 but I wondered, and I don't want to embarrass her by putting
6 these questions to her but I wonder whether plaintiff's counsel
7 knows either whether she's ever had any mental difficulties
8 and/or whether she's ever used serious drugs.

9 MR. K. LANDAU: I don't -- I don't know if she has
10 either mental, you know, infirmities or used serious drugs. I
11 know she is on a lot of drugs that --

12 MR. BURKE: She was on eight medications at her
13 deposition.

14 MR. K. LANDAU: She also does take heart medication
15 which I don't believe she has --

16 THE COURT: What kind of medication does she take?

17 MR. BURKE: There is a whole list.

18 MR. K. LANDAU: I think I have the list.

19 THE COURT: What are they for is my point.

20 MR. K. LANDAU: Antidepressants, maybe like anxiety.
21 She has a lot of different things --

22 THE COURT: All right. So, that's what I'm sensing is
23 a side effect of that kind of medication which that puts to
24 rest my concern. So, I just wanted to know why her affect was
25 the way it was because she seems intelligent, but.

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Almeciga - cross

1 MR. K. LANDAU: Yes. She did indicate this morning
2 that she doesn't have her heart medication. I don't know if
3 that affects how she's shaking or whatever.

4 THE COURT: Yes. Okay. Well --

5 MR. BURKE: Your Honor, I don't wish to extend this
6 and yet at the same time it's all about her credibility.

7 THE COURT: Oh, it is all about her credibility and so
8 I think we need to continue but I am concerned a little bit
9 about her.

10 Well, let me throw out some possibilities and you tell
11 me if any of these appeal to you. One thing is we could just
12 continue to 4:30. I must end this at 4:30 no matter what.
13 Second, since there is going to be an additional deposition of
14 the expert we could continue the hearing -- I'm not going to
15 put the expert to the problem of coming back. Whatever comes
16 out of the deposition will be added to the mix but the -- we
17 have the plaintiff's and defendant's witnesses who are here
18 today who could presumably easily be brought back.

19 MR. BURKE: It's not as easy as it is for Mr. Talbot.
20 He doesn't work for CIR anymore so I guess for the limited --

21 THE COURT: So that's another possibility, would be to
22 take him now.

23 MR. BURKE: Correct.

24 MR. K. LANDAU: And Mr. Duarte will only be five
25 minutes.

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Almeciga - cross

1 THE COURT: Right. Okay. So why don't we do that.

2 MR. K. LANDAU: He can't keep taking off work.

3 THE COURT: And we will reconvene the hearing after I
4 receive whatever materials you send me from the deposition. I
5 still want to get this, as you do, want to get these motions
6 decided sooner rather than later but --

7 MR. K. LANDAU: Given all of her mental issues, it is
8 difficult for her to come back and forth.

9 THE COURT: I agree.

10 Well, I think so we can reconvene the hearing with her
11 and continue her testimony then at some future date that we
12 will work out telephonically, just take the two other witnesses
13 today. Okay?

14 Did you want me to seal the first part of that or not?
15 It maybe doesn't matter since it was part of the deposition
16 anyway.

17 MR. BURKE: We are certainly not going to be -- I
18 don't exactly see anybody rushing to get it. I defer to
19 counsel.

20 THE COURT: If anyone in the future wants that side
21 bar sealed, just let me know.

22 MR. K. LANDAU: Thank you.

23

24

25

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Almeciga - cross

1 (In open court)

2 THE COURT: So, Ms. Almeciga, as you know, I have to
3 conclude this by 4:30 today and there are the two other
4 witnesses. I just learned from counsel that they are not as
5 readily available as you are, so what we are going to do is
6 take those other two witnesses and then we will convene this
7 hearing again after we get the further report from the
8 deposition of the expert and I think that that makes better
9 sense. So, we will excuse you for now but you will be subject
10 to testimony probably in about a month or so.

11 THE WITNESS: Okay. Thank you.

12 THE COURT: Very good.

13 MR. K. LANDAU: Your Honor, as far as the subsequent
14 testimony, I believe we discussed that it could be
15 telephonically for the purposes that we had --

16 THE COURT: We will work all of that out. I think we
17 don't need to decide that today.

18 So, you can step down.

19 THE WITNESS: Thank you.

20 (Witness steps down)

21 THE COURT: Why don't you call your next witness.

22 MR. BURKE: Calling Steve Talbot.

23 STEPHEN TALBOT,

24 called as a witness by the Defendant,

25 having been duly sworn, testified as follows:

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Talbot - direct

1 DIRECT EXAMINATION

2 BY MR. BURKE:

3 Q. Mr. Talbot, what is your occupation?

4 A. I'm a filmmaker and journalist.

5 Q. Are you currently employed?

6 A. Yes.

7 Q. Who do you work for currently?

8 A. I work for a non-profit in San Francisco called ITVS and
9 they produce the series called "Independent Lens" on PBS.

10 Q. In a nutshell for the Court's benefit, what is your
11 background?

12 A. I have been a journalist and a filmmaker for almost 40
13 years, almost all of that time for public television, and most
14 of it with the series "Frontline."

15 Q. Did you have a role at CIR in connection with the Rosalio
16 Reta and Erica Almeciga interviews that are the subject of this
17 litigation?

18 A. Yes.

19 Q. What was that role?

20 A. I was the senior producer of the project.

21 Q. What does that mean?

22 A. Well, a producer is basically the person who is in the
23 field doing interviews, directing the crew, and a senior
24 producer job is to oversee that producer, to double check their
25 work, to work with them in the edit room when the story is

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Talbot - direct

1 being put together.

2 Q. As a senior producer, did you watch the full video of
3 Ms. Almeciga's interview before it was made public?

4 A. I would say virtually the full interview, yes.

5 Q. Did you watch any other interviews?

6 A. Yes.

7 Q. Is that a part of something that is a part of your job?

8 A. Yes. That's a fundamental part of the job.

9 Q. How is it fundamental?

10 A. You are helping the producer and the editor and anyone else
11 who has reported on the project, helping them shape the story.
12 And so, you want to know who the key characters are, what their
13 points of view are and how they relate to each other.

14 Q. Did Ms. Almeciga appear as an interview -- how did she
15 appear in her interview to you?

16 A. She appeared very forthright, had a strong story to tell
17 about her husband in prison, was very forthcoming, spoke for a
18 long time in the interview, seemed very willing to want to tell
19 the story.

20 Q. Did she appear to be nervous to you in any way?

21 A. No. Not at all.

22 MR. K. LANDAU: Objection. Hearsay.

23 THE COURT: It is not hearsay.

24 MR. BURKE: It is not hearsay.

25 THE COURT: It is --

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Talbot - direct

1 MR. BURKE: Appearance.

2 THE COURT: It is opinion but it is lay opinion
3 permissible under the federal rules.

4 BY MR. BURKE:

5 Q. Before today have you ever personally met Ms. Almeciga?

6 A. No.

7 Q. As the senior producer responsible for this reporting, did
8 there come a time it was brought to your attention that
9 Ms. Almeciga was calling CIR and asking that her face be
10 obscured?

11 A. Yes.

12 About a year or over a year after the original
13 broadcast I was told that she was calling CIR.

14 Q. Did you talk or did you do some sort of investigation
15 within CIR to find out about what was happening?

16 A. Absolutely. I went back to the two producers, Josiah
17 Hooper and Bruce Livesey, went back to the reporters on the
18 story, Daffodil Altan, Andy Becker, went to my own superiors at
19 CIR, went to the editor, looked at footage, and of course one
20 of the first things we did was to pull the standard release
21 form that she had signed.

22 Q. If I may approach the witness I would like to show the
23 witness the original release which I believe has been marked as
24 Exhibit 2.

25 Showing you what's been marked as Exhibit 2, would you

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Talbot - direct

1 review that and when you are done, tell me what that is.

2 A. This is the release form that she signed. This is a
3 standard release form that we use all the time at CIR. It's
4 industry standard kind of thing we would use at "Frontline."

5 Q. What do you mean by that?

6 A. Well, it is sort of an oddity of our profession but if you
7 are in the news business doing nightly news, for instance,
8 interviewing someone, release forms are not required. They've
9 just never been required in the industry. It is assumed if you
10 sit down in front of a camera you are doing it of your own
11 volition, but in documentaries there is a tradition of them
12 coming out of Hollywood as well as the new business, it is kind
13 of a mix in some ways, so this standard release form has been
14 traditional within the documentary film business.

15 THE COURT: So, you weren't present when this was
16 signed, were you?

17 THE WITNESS: No, sir.

18 THE COURT: Is it the custom and practice to show this
19 to the person who is being asked to sign it before or after
20 their appearance?

21 THE WITNESS: It's really pretty arbitrary, believe it
22 or not. It is often shown before and sometimes it is after.

23 THE COURT: And is it explained in any way or just put
24 in front of the witness?

25 THE WITNESS: If they have any questions it's almost

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Talbot - direct

1 always explained. Honestly, you know, this varies from
2 interview to interview. I have personally done hundreds, maybe
3 thousands of interviews in my life on camera and to be totally
4 honest, it's just quite different in every situation. But
5 obviously there is an effort on part of any good producer or
6 reporter to explain.

7 THE COURT: So if, in this case, it was only presented
8 after to Ms. Almeciga after she had given the interview and was
9 not in any way shape, shape, or form explained, that would be
10 contrary, at least to your practice?

11 THE WITNESS: No. No. What I'm trying to say is that
12 in the informal nature of this business when interviewing some
13 person, often you would start out the interview by saying "Do
14 we have your permission to do this interview?" and they would
15 say, "Yes." and then they would sit down and sometimes you
16 would ask them to sign a standard release form before the
17 interview began but very, very often you would not ask them
18 until the interview was completed. And if they had any
19 questions, you would answer them.

20 And I should also say --

21 MR. K. LANDAU: Objection, your Honor. Not more than
22 five minutes previously he said often it is before, sometimes
23 it is after. Now he is indicating that --

24 THE COURT: How is that an objection? That is an
25 inconsistency that you might well want to inquire about on your

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Talbot - direct

1 examination of the witness but I don't see why it is a ground
2 for an objection. Overruled.

3 MR. BURKE: Your Honor, if you had further questions I
4 can pick up from where we were which was we were talking
5 about --

6 THE COURT: So this was drafted, to the best of your
7 knowledge, by a lawyer, right?

8 THE WITNESS: Oh yes. And as I say, this is the kind
9 of release form that is standard practice in the industry.

10 THE COURT: Right. So you think every day folks will
11 know what is meant by licensees assigned, designee's derivative
12 work right, title, and interest and terms of that sort, they're
13 just part of the everyday language of everyday folks?

14 THE WITNESS: Obviously not entirely everyday language
15 but if they have any questions, we would answer them. I mean,
16 I think the general understanding is this is -- we say to
17 people in making documentaries, we have to have a signed
18 release form that you give us your permission to appear in the
19 interview and once you have done that, we then have the
20 authority to use your image, your audio, in any way that we
21 need to to tell this story.

22 THE COURT: Right.

23 Do you know whether any of that was said in this case?

24 THE WITNESS: I believe so, yes.

25 THE COURT: What is your basis for saying that?

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Talbot - direct

1 THE WITNESS: Well, in talking to Josiah Hooper after
2 the fact. I mean, my job is when a producer comes back --

3 THE COURT: So what did Mr. Hooper tell you?

4 THE WITNESS: He said that she signed this release
5 form.

6 THE COURT: And did he say that he explained to her or
7 anything like what you just said?

8 THE WITNESS: Well, what I was about to say is that
9 it's very typical that if someone says, oh, I object to this
10 certain part of this release form, or I want some sort of
11 limitation on the use of my voice or image for this interview.
12 They often -- I have done this many times -- will write that in
13 on the agreement so that it is an understanding that there is a
14 limitation on it before. If no one does something then we
15 assume that it is free for us to use in any way.

16 THE COURT: But mine is a more narrow question. You
17 talked about this with Mr. Hooper, yes?

18 THE WITNESS: Yes, sir.

19 THE COURT: And to the best of your recollection what
20 did he say to you?

21 THE WITNESS: He said that she signed this form and
22 that there was no limitation on her agreement to be
23 interviewed.

24 THE COURT: And did he say he discussed it with her?

25 THE WITNESS: To the best of my memory, yes. The

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Talbot - direct

1 issue became -- in my conversation with her later because we
2 spoke on the phone -- was her request was that her face be
3 blurred. That's when I finally had a conversation with her,
4 two conversations on the phone. That was her request. I had
5 said there is no limitation on this agreement, there is no
6 understanding on our part that you did make such a request to
7 Mr. Hooper or Mr. Livesey at the time. And I double checked
8 that, of course, with both of them, and they said never, at any
9 point, did she ever make that request at the time.

10 THE COURT: I understand that but what I am getting at
11 is a more narrow question. Did Mr. Hooper say that he had
12 explained to her what this release was about?

13 THE WITNESS: Yes. He said this is a standard release
14 form. We need you to sign this for us to be able to use the
15 interview. He could have again, standard industry practice,
16 could have asked her verbally just to say that on camera. That
17 is sometimes done in lieu of signing a document like this.

18 THE COURT: And when did he tell you this?

19 THE WITNESS: He certainly told me this after I asked
20 him about it after she had begun to call CIR.

21 THE COURT: So --

22 THE WITNESS: We --

23 THE COURT: Excuse me.

24 THE WITNESS: Yes. Go ahead.

25 THE COURT: If he testified earlier today that he was

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Talbot - direct

1 10 feet away from her when she signed it, that it was presented
2 by Mr. Livesey, that he said nothing to her, that would be
3 inconsistent with what he told you?

4 THE WITNESS: No. I mean my recollection -- let me be
5 as precise as I can -- is when the producers return from the
6 field I check to make sure that there are signed releases for
7 any interview that's about to be included in the piece and I
8 ask if there is any limitation. And in this case, because
9 other characters in pieces that we did based on this story were
10 obscured and they were obscured in the field or we discussed
11 afterwards, for various reasons, their personal safety, because
12 they lived in Mexico, because the Zetas are a violent group,
13 should we do anything special to protect someone. So, that was
14 paramount in my mind and I asked him were there any limitations
15 and there were no limitations. And he showed me the signed
16 release form.

17 THE COURT: All right.

18 Go ahead, counsel.

19 BY MR. BURKE:

20 Q. So, from your experience, even if there had been no signed
21 release, one of the concerns that you had is whether or not the
22 subject matter is comfortable, whether they look as though they
23 are willing to answer the questions during the interview,
24 correct?

25 A. Absolutely.

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Talbot - direct

1 Q. And was there any concern, any suspicion that you could see
2 either from -- well, was there any concern about that that was
3 evidenced to you by looking at the raw video before it was
4 broadcast?

5 A. No. No.

6 Q. And was there anything expressed to you, any concerns about
7 her unwillingness or her fear of having her image be a part of
8 that broadcast?

9 A. No.

10 Q. And if there had been, what are some of the options that
11 would have happened?

12 A. We would have had a very serious discussion about doing
13 something to protect her identity.

14 Q. Let me go and pick up from what the Court was asking about
15 in terms of your discussion with Ms. Reta. What happened when
16 you talked with her on the telephone? What did she ask?

17 A. So, I just checked the dates the other day. I heard on
18 June 10th that she had called -- been calling the station, two
19 reporters there. And I went around, gathered everybody up,
20 double-checked everything with people, and then called her back
21 two days later on June 12th. That was the first time we ever
22 had any communication.

23 Q. In what year?

24 A. 2014.

25 So, I asked her what the issue was and she began to

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Talbot - direct

1 explain that she wanted her face to be blurred and that it was
2 her understanding that it should have been blurred in the first
3 place. I said that was news to me because she had signed a
4 release form. I had never heard anything like this and the
5 producer both denied that she ever made that request.

6 So, then I also said this had been broadcast over a
7 year previously on Univision and it had been seen by a very
8 large audience. It was the lead story on their nightly news
9 the day after the head of the Zetas, Miguel Treveno, had been
10 arrested in Mexico so it was a very big news story. Jorge
11 Ramos, their top anchor, introduced the story. So, many, many
12 people saw this. It was posted on their website. Many, many
13 people saw it on their website. We posted it on our website
14 and YouTube channel. So, it was very widely seen. And we
15 heard nothing for over a year. So, this was a bit of a shock,
16 I must say, when we got this call.

17 But, I said I would discuss this with others at CIR
18 and I would get back to her.

19 Q. Did you get back to her?

20 A. I did.

21 After discussing and going through everything with
22 everyone I called her back, I believe on the 17th of June which
23 was the following week, and I said that we were under no legal
24 obligation, no journalistic obligation, no moral obligation to
25 change anything we had done, that she had given us full

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Talbot - direct

1 permission to use this interview in any way we needed to to
2 tell the story. We felt it was a very important story we were
3 telling but -- and, that the main story had already happened.

4 Honestly, my first reaction was not to change anything
5 because in talking this through with people at CIR we agreed
6 that going forward with a documentary that we were making using
7 some of this same footage we would indeed, at her request, blur
8 her face. And I asked that if that was fine with her and she
9 said thank you very much, she seemed to be very grateful. We
10 had a good conversation, I felt. I said, will that resolve the
11 issue? And she said yes.

12 Q. To be clear, when you agreed on behalf of CIR to mask
13 Ms. Almeciga's face for any future broadcast of her interview,
14 did you do this because of any previous agreement between
15 plaintiff and CIR?

16 A. No previous agreement at all.

17 Q. So, why did you do it?

18 A. We did it, first of all, my first impulse was not to do it
19 because I didn't think we had any obligation whatsoever to do
20 it. But, the fact of the matter was that this story had
21 already been seen. It was out in the public over a year
22 before. It had had its biggest impact. The story had gotten
23 out. So, in whatever smaller version of the story we were
24 doing going forward, in a way it didn't matter that much to us.
25 The main interview in this story, I must say, was her husband,

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Talbot - direct

1 the former Zeta, who was imprisoned in Texas and had been an
2 assassin by his own account. That was the key interview in
3 this story. There were many other interviews with law
4 enforcement officials, with other people in Mexico including
5 another person who had been -- said that he had been recruited
6 by the Zetas as an assassin as a young man. That was the whole
7 point of the story, that the Zetas were recruiting on both
8 sides of the border for killers.

9 So that was the story. The story was out, it was
10 over. So, at that point we thought, all right, if she's upset
11 about this, if she would like her face being blurred going
12 forward, honestly, it doesn't mean that much to us and if it is
13 a courtesy to her and makes her feel better and resolves the
14 issue, then we will do it.

15 Q. Did you talk with Ms. Almeciga about the release?

16 A. About the release? Yes. And she, in my conversations with
17 her, never denied that she signed this release.

18 Q. Was it simply that she wanted some remedy going forward?
19 Is that your understanding of what she was asking you?

20 A. When I asked her What is the issue? What would you like us
21 to do? She said I would like you to blur my face in any future
22 version of this story.

23 Q. How many documentaries have you personally prepared in your
24 career?

25 A. As producer? Myself? Reporter? Over 40. And I have

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Talbot - direct

1 probably supervised hundreds.

2 Q. During the course of this work have you ever masked the
3 identity of anybody you have interviewed?

4 A. Yes, I have.

5 Q. Is it difficult to accommodate somebody who wants their
6 identity protected?

7 A. No. Not really.

8 Q. How do you do it?

9 A. There are two main ways it can be done. You can do it in
10 the field, and in the case of this documentary, for instance,
11 Josiah protected the identity of this person I just referred to
12 in Mexico, a young boy, who had been recruited as a killer by
13 the Zetas, and he was filmed in such a way to make sure you
14 could not identify his facial features. And that's done
15 through lighting, through camerawork on the spot. So, that's
16 the main way, you can do it on the spot. And it can also be
17 done in post-production in edit where you add effects to blur
18 someone's face or you can alter someone's voice.

19 Q. I want to go back to your investigation at CIR.

20 THE COURT: Counsel, I am very concerned that you are
21 not allowing sufficient time for cross-examination of this
22 witness. Now, if that's your desire or not your desire but if
23 that's the result, that's fine, because we are going to have to
24 continue this hearing subsequently but that will mean that this
25 poor fellow will have to come back.

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Talbot - cross

1 MR. BURKE: With that, your Honor, I'm done -- with
2 one exception.

3 The release that you have reviewed from Ms. Almeciga,
4 did you see that during your time as a senior producer at CIR?

5 A. Yes.

6 MR. BURKE: Okay.

7 THE COURT: Cross-examination.

8 CROSS EXAMINATION

9 BY MR. K. LANDAU:

10 Q. Thank you, your Honor. I will be real quick.

11 You are aware that Ms. Almeciga's identity was
12 concealed in a previous interview with the CBC; is that
13 correct?

14 A. Only after the fact. I did not know it at the time, no.

15 Q. Okay. And when did you become aware of that? Before or
16 after this story was broadcast?

17 A. After it was broadcast.

18 Q. After, okay.

19 Which organizations was this story licensed to?

20 A. The principal organization, as I mentioned before, is
21 Univision.

22 Q. Were there any others?

23 A. No. For Univision we did the nightly news story that she
24 appeared in. We also did, that same week on their equivalent
25 of 60 minutes, *Aqui y Ahora*.

FC45almH

Talbot - cross

1 Q. How about Vice, just to kind of expedite?

2 A. Vice? No.

3 Q. Was that licensed?

4 A. No.

5 Q. Mother Jones?

6 A. No.

7 Q. IFiles is your own?

8 A. IFiles was the YouTube channel we created.

9 Q. PBS? Was it licensed to PBS?

10 A. No. It was not licensed to PBS.

11 Q. So, on YouTube, YouTube plus traditional television, to
12 your recollection whatever was not under the umbrella of CIR,
13 was the primary license of Univision at that point?

14 A. Yes, because the YouTube channel the iFiles, it is not
15 called Reveal, was in fact CIR.

16 Q. To your estimate, how many views on YouTube did this story,
17 when Ms. Almeciga's face was not concealed, were seen?

18 A. Well, if you believe their face counts, their count, it is
19 about a quarter of a million people who have seen it.

20 Q. Quarter of a million?

21 A. Yes.

22 Q. How about Univision?

23 A. Univision? Millions probably. I don't know for a fact
24 but --

25 Q. If I was to say over 5 million or 6 million would that be a

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Talbot - cross

1 fair statement?

2 A. I wouldn't know that for certain, but assuming they have a
3 very large television audience and very large website, so in
4 the millions for sure.

5 Q. Okay. What year did CIR's online and YouTube division
6 begin?

7 A. Well, CIR has been online for many, many years but the
8 YouTube channel I actually started for them under a Knight
9 Foundation grant in 2012.

10 Q. Isn't true that this story garnered more views than CIR was
11 a part of online than any of their other stories?

12 A. No. Not at all true.

13 Q. No.

14 A. No. CIR has had stories that have garnered millions of
15 views on YouTube.

16 Q. Online?

17 A. Online.

18 Q. Online. Okay.

19 THE COURT: Counsel, I didn't understand what a large
20 part of your adversary's questioning of this witness had to do
21 with this hearing and I certainly don't understand what your
22 questions have to do with this hearing. This hearing is
23 addressed to just two things: One, the sanctions motion
24 brought by the defendants claiming that the plaintiff
25 fabricated her contentions in this case regarding whether it

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Talbot - cross

1 was an oral contract, whether she had or had not signed the
2 release, all the things like that; and second of all, the
3 admissibility under a Daubert-type 702 approach of your expert
4 witness.

5 Now, we have had questions -- and I don't just blame
6 you because we have had it from your adversary just a few
7 minutes ago -- of this gentleman who I will now refer to as the
8 hostage, but I informed counsel at the very beginning of this
9 hearing that I had to leave at 4:30, and that is really
10 something I cannot change. I can stretch it maybe five minutes
11 and that's about it. If, in fact, you have questions relating
12 to the subject matter of this hearing, I think now is the time
13 for it.

14 MR. K. LANDAU: Yes, your Honor.

15 Just real quick in answer. This man was not in Texas
16 so it goes to the motivations of what the state of mind of the
17 producers that physically were there and the type of
18 representations they made to Mr. Talbot.

19 THE COURT: Okay. Duly noted.

20 MR. K. LANDAU: But I will get on to the next topic.

21 BY MR. K. LANDAU:

22 Q. Sir, are you aware that six to eight months after the
23 interview took place Mr. Hooper and Mr. Livesey contacted
24 Ms. Almeciga?

25 A. Not specifically. No.

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Talbot - cross

1 Q. You indicated that once you receive a release you no longer
2 need the interviewee's participation for anything, correct?

3 A. There may be some sort of follow-up interview or something
4 that one wants but, no, once the interview has been recorded
5 and the release has been signed, then we go about creating our
6 story.

7 Q. Earlier you indicated that Mr. Hooper advised you that he
8 had counseled Ms. Almeciga prior to her signing the release?
9 Do you recall that?

10 A. I'm not sure I said counseled her. What I said was gave
11 her the release, was available to answer any questions, to
12 explain then that there was no limitation on the agreement.

13 Q. Well, did he or did he not explain anything to her?

14 A. I was not there so I can't tell you that for a fact.

15 Q. Based upon the conversation you had with Mr. Hooper, what
16 did he say?

17 A. My best recollection of my conversation with him is that he
18 gave her this and said this is the standard release form that
19 you must sign in order for us to be able to use this interview,
20 and she said fine and signed it.

21 Q. As far as Mr. Livesey, have you had any conversations with
22 him regarding the substance of this hearing?

23 A. Yes. I mean, the first thing I did when we got the calls
24 and I rounded everyone up is to ask them about, you know, the
25 release. Do we have the release? Number one. Yes, we did.

FC45almH

Talbot - cross

1 And was there any limitation ever put on it verbally? No,
2 there was not any limitation verbally ever. And so, we should
3 go ahead and use the interview and let's look at it.

4 Q. Did Mr. Livesey indicate that he had a discussion with
5 Ms. Almeciga prior to her signing -- purportedly signing the
6 release?

7 A. No.

8 Q. No. So, no, you don't recall, or no, he did not have a
9 conversation?

10 A. I don't think he had a conversation -- I mean, I had a
11 conversation the same way Josiah just explained would have.
12 Here is this document to sign, we need it. If you want this --
13 he certainly told me that after the fact when we were
14 discussing this, in reference to the calls over a year later,
15 absolutely.

16 THE COURT: Did these two fellows, at the time of this
17 conversation, did they report to you, in effect?

18 THE WITNESS: Yes.

19 THE COURT: And would they have been authorized to
20 have made any oral agreement with her?

21 THE WITNESS: They would have been authorized if they
22 had then come back to me and said, look, Steve, we got this
23 interview but in this case the person has asked us to do such
24 and such. And then I would have had to decide, along with
25 others at CIR, whether it was fair to use the interview.

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Talbot - cross

1 THE COURT: Okay.

2 BY MR. K. LANDAU:

3 Q. So, based upon that, did Mr. Hooper have the authority to
4 grant the reprieve, so to speak, as far as the identity being
5 concealed to that gentleman in Laredo?

6 A. Yes.

7 Q. He did.

8 And did Mr. Hooper have the authority to enter into an
9 oral contract with Detective Garcia as to concealing his
10 identity as well?

11 A. Yes. He had that authority throughout.

12 Q. Okay.

13 A. That doesn't mean that when it got back and we were
14 determining whether it would be in a documentary or in a news
15 story whether we would use it. We would always consider what
16 those limitations were.

17 Q. Similarly, he would have the authority to enter into an
18 oral contract with Ms. Almeciga as to concealing her identity?

19 A. Yes.

20 Q. You indicated that Ms. Almeciga only contacted CIR in 2014,
21 correct?

22 A. Yes.

23 Q. Were you aware that Ms. Almeciga contacted Mr. Livesey in
24 2013?

25 A. He told me later when we were reviewing all of this that he

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Talbot - cross

1 had some contact with her before, yes.

2 Q. You indicated that there is an internal investigation that
3 was conducted as to the veracity of what Mr. Hooper and
4 Mr. Livesey were representing as far as whether or not
5 Ms. Almeciga had informed consent?

6 A. Yes.

7 MR. BURKE: Objection. Mischaracterizes his
8 testimony.

9 A. Yes, I would not characterize --

10 Sorry. Sorry, sir.

11 THE COURT: So, I think he is about to explain so I
12 will allow the Judge here to give his testimony.

13 THE WITNESS: Thank you, sir.

14 I would not characterize it as an investigation. It
15 was a review.

16 BY MR. K. LANDAU:

17 Q. Okay. Fair enough.

18 So, you oversaw the review?

19 A. I was the point person in the review. We -- CIR is a very
20 collegial organization. It is a very responsible organization.
21 Everyone has been in the news business for a very long time,
22 these are very serious journalists, newspaper people. We have
23 all taken these issues very, very seriously. No one wants to
24 make mistakes and we had discussions of this. It was a, you
25 know, pretty quick discussion in terms of us agreeing that we

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Talbot - cross

1 had done everything right. Then the discussion was, going
2 forward, are we going to blur this woman's face in any future
3 versions of what we do?

4 Q. Okay. To that point --

5 THE COURT: I am sorry, we really have --

6 MR. K. LANDAU: Two more questions?

7 THE COURT: Okay. Go ahead.

8 MR. K. LANDAU: Thank you. Very quickly.

9 Q. You indicated this was drafted by an attorney which makes
10 it a legally binding document, correct?

11 MR. BURKE: Objection. Calls for speculation.

12 A. It's a scanned --

13 THE COURT: The first part I will allow, yes; produced
14 by an attorney?

15 THE WITNESS: Yes.

16 THE COURT: The question being legally binding is for
17 the Court.

18 MR. K. LANDAU: Correct. That question is withdrawn.

19 Q. As far as ensuring, like you said, the responsibility of
20 CIR and all of your journalists, did you ever think to ensure
21 that the actual signature was the person's legal name?

22 A. No, we did not check that because we gave -- she told us
23 this was her name, this was the name that was put on the
24 screen. This is how she signed the document so we took that at
25 face value.

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Talbot - cross

1 Q. But you didn't know -- you did not conduct any independent
2 investigation or review --

3 A. As to whether this was her actual name?

4 Q. Right.

5 A. No. She signed the document with this name. That's how
6 she identified herself to us. That's names we put on the
7 screen in the story.

8 Q. So, because there wasn't any type of notarization you
9 didn't feel compelled to ask her for a copy of her drivers'
10 lines or other legal document?

11 A. To see if that matched her name?

12 Q. Yes.

13 A. No.

14 Q. And to see that that is her signature?

15 A. No.

16 MR. K. LANDAU: Thank you. No further questions.

17 THE COURT: Thank you very much.

18 (Witness excused)

19 MS. SCHARY: Your Honor, we have two very brief
20 housekeeping matters. One, we wanted to confirm for the record
21 that Defendant's Exhibit 2 and Exhibit 33, which are the two
22 releases, that those are submitted and into the record and
23 accepted by Court.

24 THE COURT: Yes.

25 (Defendant's Exhibits 2 and 33 received in evidence)

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Talbot - cross

1 MS. SCHARY: And the second one is we just want to
2 advise the Court that we are going to make an objection to the
3 admissibility of Ms. Carlson under Rule 702 and Daubert and we
4 can address that in the submissions after we do the deposition,
5 but I wanted to note that for the record.

6 THE COURT: Well, I thought that was part of what this
7 hearing was all about.

8 So, first of all, I thank the witness and counsel and
9 Ms. Carlson, who I see is still here, and our illustrious
10 visitors and, unfortunately, every year there is put on, at the
11 court house in the Southern District of New York, something
12 called the Court House Follies which is not available on CIR or
13 anywhere else. It purports to be an exercise in sophomoric
14 humor but I don't think it is actually that mature -- and I
15 know that because I write much of it and perform some of it and
16 it is about to take place.

17 So, that's why I have got to leave but I thank you all
18 for being here and we will work out the schedule for any
19 further proceeding after the matters concerning Ms. Carlson are
20 taken care of.

21 Thank you very much.

22 o0o

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